# Exhibit A

Declaration of Max Ciccarelli

JOHN GIUST (SBN 196337)
E-Mail: jgiust@gmail.com
10370 Rue Fontenay
San Diego CA 92131
Telephone: 619-993-1656

And

MAX CICCARELLI (*Pro Hac Vice*)
E-Mail: Max.Ciccarelli@tklaw.com
JUSTIN S. COHEN (*Pro Hac Vice*)
E-Email: Justin.Cohen@tklaw.com

THOMPSON & KNIGHT LLP
One Arts Plaza
1722 Routh Street, Suite 1500
Dallas, TX 75201
Telephone: 214-969-1700
Facsimile: 214-969-1751

Attorney for Defendant
SOUTHWEST AIRLINES CO.

**UNITED STATES DISTRICT COURT**

**SOUTHERN DISTRICT OF CALIFORNIA**

| | |
|---|---|
| DEEP SKY SOFTWARE, INC., a California Corporation,<br><br>Plaintiff,<br><br>vs.<br><br>SOUTHWEST AIRLINES CO., a Delaware Corporation,<br><br>Defendant. | Case No. 10-CV-01234-CAB (KSC)<br><br>**Declaration of Max Ciccarelli in Support of Southwest's Application for Reasonable and Necessary Fees** |

I, Max Ciccarelli, declare under penalty of perjury that the following statements are true and correct:

1. I am a partner with Thompson & Knight LLP, over the age of 18 and competent to state all matters herein from my own personal knowledge.

2. I am licensed to practice law in Texas and admitted *pro hac vice* to appear before this Court in connection with the above-captioned matter. I have been the lead attorney for Southwest responsible for this matter since Southwest's first pleading in this case. I have personal knowledge of the facts contained in this declaration and, if called to testify, would and could testify competently thereto.

3. I submit this declaration in support of Southwest's Application for Reasonable and Necessary Fees in this matter, including fees and costs incurred from Thompson & Knight.

4. I am a partner at Thompson & Knight specializing in intellectual-property litigation with over 20 years of experience.

5. I, along with the following Thompson & Knight attorneys, performed the majority of the work on this matter from 2010 to today:

**Michael Heinlen** - partner specializing in intellectual-property litigation with over 14 years of experience.

**Justin Cohen** - associate specializing in intellectual-property litigation with over 8 years of experience.

**Vishal Patel** – associate specializing in intellectual-property litigation with over 7 years of experience.

6. The following table lists the hourly rates for each of the above-named attorneys actually charged for handling this matter during the course of the roughly 5 years that this case has been pending:

| Attorney | Hourly Rate |
|---|---|
| Max Ciccarelli | $505 – $625.50 |
| Michael Heinlen | $405 – $535.50 |
| Justin Cohen | $345 – $481.50 |
| Vishal Patel | $270 – $315 |

7. Attached as Exhibit 1 are true and correct copies of all of Thompson & Knight's invoices sent to Southwest in connection with this matter, with minor redactions. The total amount of the invoices in Exhibit 1 is $432,800.84, which includes $397,033.11 of attorneys' fees and $35,767.73 in costs.

8. In addition to the amounts shown in Exhibit 1, Southwest has also incurred $10,323.00 in attorneys' fees that have not yet been submitted to Southwest. Nearly all of these unbilled fees were incurred preparing this application for attorneys' fees.

9. Defending this case for Southwest involved handling the district court litigation and two *inter partes* reexaminations in the U.S. Patent and Trademark Office.

10. On behalf of Southwest, Thompson & Knight requested and prosecuted the reexaminations of two of Deep Sky's patents, namely U.S. Patent No. 6,378,770 ("the '770 Patent," which was at issue in this case) and U.S. Patent No. 7,370,047 ("the '047 Patent, which is related to the '770 Patent).

11. With respect to the reexamination of the ’770 Patent – the patent at issue in the litigation – Thompson & Knight chose to litigate the validity of that patent before the PTO instead of before the district court because the PTO provided a lower-cost alternative to resolving that issue. As evidenced by the joint motion to stay the district court litigation [Doc. No. 26], Deep Sky agreed that litigating the issue at the PTO would be cheaper than litigating it in district court.

12. With respect to the ’047 Patent, Southwest requested reexamination of that patent because, although not asserted in the lawsuit, Deep Sky had filed a broadening reissue application in the PTO and threatened to assert the ’047 Patent against Southwest at the completion of the broadening reissue proceeding.

13. Southwest is not requesting attorneys’ fees or costs associated with handling the reexamination of the ’047 Patent. Therefore, as explained in more detail below, Southwest is deducting the fees and costs associated with the reexamination of the ’047 Patent from the amounts it billed Southwest in connection with this matter.

14. Attached as Exhibit 2 is a summary of those attorneys’ fees and costs associated with handling the reexamination of Deep Sky’s ’047 Patent, with minor redactions. The best estimate of the total amount of attorneys’ fees and costs that Southwest incurred in connection with the reexamination of the ’047 Patent is $64,156.95, which is not included in Southwest’s application for attorneys’ fees.

15. The ’047 Patent is a continuation of the ’770 Patent, shares the same specification, and includes similar claims. Southwest used much of the same prior art in both reexaminations, and Deep Sky used many of the same arguments, evidence, and declarations in both reexaminations. Therefore, the fees for handling the reexamination of the ’047 Patent were modest as compared to the fees for handling the litigation and reexamination of the ’770 Patent.

16. Southwest has paid all of the fees and costs submitted with this request, except for the $10,323 that has not yet been billed to Southwest.

17. The following data is from AIPLA's Economic Survey for 2013:

a. for cases with $1 million to $10 million at risk, the average litigation costs are $1.229 million and $1.6 million in the 3rd quartile through discovery alone;

b. for cases with $1 million to $10 million at risk, the average litigation costs are $2.1 million inclusive of all costs;

c. for cases with $10 million to $25 million at risk, the average litigation costs are $2.192 million and $3.0 million in the 3rd quartile through discovery alone;

d. for cases with $10 million to $25 million at risk, the average litigation costs are $3.554 million inclusive of all costs;

e. the average cost for an *inter partes* reexamination, inclusive of an appeal to the Board, is $201,000;

f. for firms in Texas, the average cost for an *inter partes* reexamination, inclusive of an appeal to the Board, is $250,000, and the 3rd quartile for firms in Texas is $475,000;

g. for firms in the San Francisco area, the average cost for an *inter partes* reexamination, inclusive of an appeal to the Board, is $264,000, and the 3rd quartile for firms in San Francisco is $375,000;

h. for a partner in a Texas law firm, the average hourly rate charged is $546, and those in the 3rd quartile charge $678 per hour;

i. for a partner in a Los Angeles-area law firm, the average hourly rate charged is $557, and those in the 3rd quartile charge $675 per hour;

j. for a partner in a San Francisco-area law firm, the average hourly rate charged is $673, and those in the 3rd quartile charge $825 per hour;

k. for an associate in a Texas law firm, the average hourly rate charged is $391, and those in the 3rd quartile charge $518 per hour;

l. for an associate in a Los Angeles-area law firm, the average hourly rate charged is $389, and those in the 3rd quartile charge $503 per hour; and

m. for an associate in a San Francisco-area law firm, the average hourly rate charged is $460, and those in the 3rd quartile charge $576 per hour.

18. Based on my review of the above-referenced documents and on my knowledge of the case as lead counsel for Southwest from the beginning of the matter, I believe that the attorneys' fees and costs referenced herein are reasonable. Specifically, it is my professional opinion that both the rates charged for the work and the number of hours spent are reasonable.

19. I have also reviewed the declaration of John Giust, and its attachments, being submitted in this matter. Based on my review of those documents and on my knowledge of the case as lead counsel for Southwest from the beginning of the matter, I believe that the attorneys' fees and costs referenced in the declaration of John Giust are reasonable. Specifically, it is my professional opinion that both the rates charged for the work and the number of hours spent are reasonable.

20. Attached as Exhibit 3 is a true and correct copy of a letter that I received from Jonathan Pettit dated March 25, 2011 in connection with this case.

Executed this 18th day of June, 2015 in Dallas, Texas.

Max Ciccarelli (*Pro Hac Vice*)
E-Mail: Max.Ciccarelli@tklaw.com

Attorney for Defendant
SOUTHWEST AIRLINES CO.

# Exhibit 1

Invoices from Thompson & Knight to Southwest

THOMPSON & KNIGHT LLP

ATTORNEYS AND COUNSELORS

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Page 1
January 31, 2011
Invoice 41365000

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**INVOICE SUMMARY**

For Services Rendered Through December 31, 2010

Our Matter # 516441.000008
DEEP SKY SOFTWARE, INC.

| | | |
|---|---|---|
| Fees for Professional Services ........................................................ | $ | 20,270.00 |
| Reimbursable Costs ........................................................ | | 955.61 |
| TOTAL CURRENT DUE FOR THIS MATTER ........................................ | $ | 21,225.61 |

Please remit payment within fifteen (15) days

Our Matter # 516441.000008
DEEP SKY SOFTWARE, INC.

| | | | |
|---|---|---|---|
| 12/01/2010 | Meet with Deep Sky at Southwest to work on settlement; provide prior art materials to Deep Sky; obtain signed NDA agreement from J. Iacuone | | |
| | M CICCARELLI | 2.50 hrs. | L160 |
| 12/02/2010 | Call with J. Iacuone to debrief from meeting with Deep Sky | | |
| | M CICCARELLI | 0.10 hrs. | L120 |
| 12/02/2010 | Prepare and send prior art to opposing counsel | | |
| | V PATEL | 0.60 hrs. | L320 |
| 12/06/2010 | Prepare for and attend 26(f) conference with opposing counsel | | |
| | V PATEL | 1.70 hrs. | L230 |
| 12/06/2010 | Email to C. Stuart and his co-counsel regarding Rule 26(f) conference; instructions to V. Patel [redacted] | | |
| | M CICCARELLI | 2.20 hrs. | L120 |
| 12/09/2010 | Email to Deep Sky's lawyers reminding them about circulation of Rule 26(f) conference report and regarding willingness to discuss prior art | | |
| | M CICCARELLI | 0.20 hrs. | L120 |
| 12/10/2010 | Communication with J. Petitt regarding NDA agreement | | |
| | M CICCARELLI | 0.20 hrs. | L120 |
| 12/14/2010 | Communications with J. Giust regarding ENE meetings [redacted] | | |
| | M CICCARELLI | 0.80 hrs. | L120 |
| 12/15/2010 | Extensive revisions to Deep Sky's Fed.R.Civ.P. 26(f) statement; draft ENE statement; several revisions to same; email to J. Giust and J. Iacuone regarding same | | |
| | M CICCARELLI | 4.30 hrs. | L210 |
| 12/16/2010 | Review J. Giust's edits to ENE statement; make further edits to same; meet with M. Heinlen regarding his suggestions for ENE statement; [redacted] | | |
| | M CICCARELLI | 2.70 hrs. | L120 |
| 12/16/2010 | Review and revise status statement | | |
| | J HEINLEN | 1.20 hrs. | C300 |
| 12/17/2010 | Review and revise status statement | | |
| | J HEINLEN | 0.60 hrs. | L120 |
| 12/17/2010 | Further revisions to ENE Statement | | |
| | M CICCARELLI | 3.30 hrs. | L120 |
| 12/20/2010 | Make further revisions to Rule 26 report; communications with Deep Sky's counsel regarding same; draft SWA's Initial Disclosures; communications with J. Iacuone regarding same | | |
| | M CICCARELLI | 2.60 hrs. | L110 |
| 12/21/2010 | Communications with J. Giust regarding ENE conference | | |
| | M CICCARELLI | 0.20 hrs. | L110 |
| 12/26/2010 | Travel to San Diego for ENE conference (prepare for same while traveling | | |
| | M CICCARELLI | 6.50 hrs. | L450 |
| 12/27/2010 | Attend ENE conference; travel back to Dallas | | |
| | M CICCARELLI | 11.50 hrs. | L450 |
| 12/28/2010 | Minute order from Court regarding ENE conference | | |
| | M CICCARELLI | 0.10 hrs. | L190 |

| | | | |
|---|---|---|---|
| 12/28/2010 | Conference with M. Ciccarelli regarding outcome of Early Neutral Evaluation hearing [redacted] | | |
| | B SOSTEK | 0.20 hrs. | L120 |

Fees for Professional Services ........................................ $ 20,270.00

**Summary of Fees**

| Name | Title | Hours | Rate/Hr | Amount |
|---|---|---|---|---|
| SOSTEK, B | SENIOR PARTNER | 0.20 | $ 670.00 | $ 134.00 |
| CICCARELLI, M | SENIOR PARTNER | 37.20 | 505.00 | 18,786.00 |
| HEINLEN, J | PARTNER | 1.80 | 405.00 | 729.00 |
| PATEL, V | ASSOCIATE | 2.30 | 270.00 | 621.00 |

**Reimbursable Costs**

| | | |
|---|---|---|
| 12/14/2010 | Airfare - VENDOR: Max Ciccarelli Travel to San Diego for attendance at Early Neutral Evaluation | $ 824.80 |
| 12/15/2010 | Travel - VENDOR: Max Ciccarelli Travel to San Diego for attendance at Early Neutral Evaluation | $ 130.17 |
| | Electronic Research | 0.64 |

Total Reimbursable Costs ........................................ $ 955.61

CURRENT FEES AND COSTS FOR THIS MATTER ........................................ $ 21,225.61

TOTAL CURRENT DUE FOR THIS MATTER ........................................ $ 21,225.61

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Page 1
March 31, 2011
Invoice 41371237

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**INVOICE SUMMARY**

For Services Rendered Through February 28, 2011

Our Matter # 516441.000008
DEEP SKY SOFTWARE, INC.

| | |
|---|---|
| Fees for Professional Services ..........................................................$ | 30,721.00 |
| Reimbursable Costs ........................................................................... | 193.40 |
| TOTAL CURRENT DUE FOR THIS MATTER ................................................... | $ 30,914.40 |

Please remit payment within fifteen (15) days

Our Matter # 516441.000008
DEEP SKY SOFTWARE, INC.

| | | | | |
|---|---|---|---|---|
| 01/05/2011 | Email to J. Pettit reminding him that we have limited time to settle before we file reexamination requests | | | |
| | M CICCARELLI | 0.10 hrs. | L190 | |
| 01/06/2011 | Review Case Management Conference Order Regulating Discovery and Other Pretrial Procedures | | | |
| | J BRANDT | 0.30 hrs. | B110 | |
| 01/06/2011 | Determine new docket and deadline entries, revise docket to reflect same | | | |
| | T MURRELL | 0.70 hrs. | P280 | |
| 01/11/2011 | Preliminary review of Deep Sky's infringement contentions and associated production; meet with V. Patel regarding continuing work on invalidity charts in light of infringement contentions | | | |
| | M CICCARELLI | 2.50 hrs. | L190 | |
| 01/11/2011 | Review Deep Sky's infringement contentions and document production; prepare letter regarding document production deficiencies | | | |
| | V PATEL | 3.70 hrs. | L320 | |
| 01/12/2011 | Prepare, review and revise letter regarding deficiencies in Deep Sky's document production | | | |
| | V PATEL | 1.00 hrs. | L320 | |
| 01/12/2011 | Prepare production documents in LAW pre-discovery to import into Relativity database, set-up and customize Relativity database, import production documents (Deep Sky) | | | |
| | L PAVEL | 2.60 hrs. | L140 | |
| 01/13/2011 | Follow-up email to J. Pettit's (Deep Sky's lawyer) reminding him that Deep Sky owes us a settlement proposal promised at the ENE conference | | | |
| | M CICCARELLI | 0.10 hrs. | L160 | |
| 01/14/2011 | Review invalidity charts and publications for invalidity claims against asserted claims | | | |
| | V PATEL | 2.40 hrs. | C320 | |
| 01/19/2011 | Communications with C. Stuart trying to get Deep Sky to be responsive on their own promised settlement proposal | | | |
| | M CICCARELLI | 0.10 hrs. | L160 | |
| 01/24/2011 | Review invalidity contentions for asserted claims | | | |
| | V PATEL | 2.00 hrs. | C320 | |
| 01/24/2011 | Meet with V. Patel regarding new claims asserted by Deep Sky in their infringement contentions and our invalidity positions regarding those claims | | | |
| | M CICCARELLI | 0.40 hrs. | L120 | |
| 01/25/2011 | Status summary to S. Cozad and S. Sullivan | | | |
| | M CICCARELLI | 0.50 hrs. | L120 | |
| 02/02/2011 | Review invalidity contentions and rejections from patent office | | | |
| | V PATEL | 0.70 hrs. | C320 | |
| 02/02/2011 | Review of the '770 patent owned by Deep Sky; review of current invalidity contention documentation in preparation to draft full invalidity contentions. | | | |
| | J COHEN | 2.20 hrs. | C320 | |
| 02/03/2011 | Review the '047 patent owned by Deep Sky; further review prior draft of invalidity contentions; cursory review of references cited in draft invalidity contentions | | | |
| | J COHEN | 1.70 hrs. | C320 | |
| 02/09/2011 | Call with M. Ciccarelli regarding preparation of invalidity contentions; review infringement contentions and first half of documents produced by Deep Sky in preparation to draft invalidity contentions; draft notes regarding validity issues; outline research strategy for researching each potential validity issue | | | |

| | | | |
|---|---|---|---|
| | J COHEN | 4.50 hrs. | C320 |
| 02/10/2011 | Research regarding '770 validity issues, including review of remainder of docs produced by Deep Sky; review of previous invalidity presentations and references; review of file histories for the '770 and '047 patents; search for additional books and references | | |
| | J COHEN | 4.60 hrs. | C320 |
| 02/11/2011 | Search for additional books and references regarding invalidating prior art for '770 patent; research other validity, inventorship, and ownership issues | | |
| | J COHEN | 3.80 hrs. | C320 |
| 02/11/2011 | Meet with J. Cohen regarding invalidity contentions and additional basis of invalidity based on invention documents produced by Deep Sky | | |
| | M CICCARELLI | 0.70 hrs. | L120 |
| 02/14/2011 | Research regarding inventor Gorman's history with various companies, including Mediware; search for additional prior art; draft invalidity memo for M. Ciccarelli regarding invalidity issues; draft document deficiencies list for M. Ciccarelli | | |
| | J COHEN | 5.70 hrs. | C320 |
| 02/15/2011 | Meet with M. Ciccarelli regarding strategy for invalidity contentions; research additional prior art references | | |
| | J COHEN | 1.10 hrs. | C320 |
| 02/15/2011 | Set up new Relativity user and assign to Deep Sky Relativity database (J. Cohen) | | |
| | L PAVEL | 0.30 hrs. | L140 |
| 02/17/2011 | Review prior art search report from Landon; begin preparing cover pleading for invalidity contentions; review S.D. CA local patent rules; review newly obtained prior art references; review and revise previously prepared claim charts for the '770 patent | | |
| | J COHEN | 2.40 hrs. | C320 |
| 02/18/2011 | Review newly obtained books to use as prior art references; draft claim chart for Groff reference | | |
| | J COHEN | 1.80 hrs. | C320 |
| 02/20/2011 | Review Spaey reference; chart Spaey reference against claims 5-21 of the '770 patent | | |
| | J COHEN | 2.30 hrs. | C320 |
| 02/21/2011 | Chart remainder of Spaey reference; review and chart Marshall reference against the '770 patent; begin review of Excel 97 reference; draft priority argument in cover pleading | | |
| | J COHEN | 6.60 hrs. | C320 |
| 02/21/2011 | Follow up with C. Stuart regarding Deep Sky's production | | |
| | M CICCARELLI | 0.10 hrs. | L320 |
| 02/22/2011 | Communications with Deep Sky's counsel regarding Deep Sky's document production and missing documents | | |
| | M CICCARELLI | 0.20 hrs. | L320 |
| 02/22/2011 | Review and chart the Excel 97 reference; review new books on Microsoft Access and FoxPro; draft cover pleading section on 35 USC 112 issues with claims; search for additional prior art, particularly Visual Basic programs for use with Microsoft Excel | | |
| | J COHEN | 8.70 hrs. | C320 |
| 02/23/2011 | Meet with J. Cohen regarding document production to accompany invalidity contentions | | |
| | M CICCARELLI | 0.90 hrs. | L320 |
| 02/23/2011 | Draft cover pleading section on Section 102(b) on sale bar and public disclosures; research Mediware software sales and presentations; search for prior art Visual Basic books and source code; review new books on Microsoft Access; update chart with additional Excel references based on Examiner's rejections; add citations to chart for Marshall and Spaey references | | |
| | J COHEN | 8.30 hrs. | C320 |

| | | | | |
|---|---|---|---|---|
| 02/24/2011 | Meet with M. Ciccarelli regarding document production to accompany invalidity contentions; study website code regarding incremental search on airports; [redacted] search for additional Visual Basic code and books; review newly obtained Visual Basic code books | | | |
| | J COHEN | 6.70 hrs. | C320 | |
| 02/24/2011 | Meet with J. Cohen regarding operation of Southwest's website [redacted]; communications with A. Gardner regarding mediation site | | | |
| | M CICCARELLI | 0.80 hrs. | L190 | |
| 02/25/2011 | Review additional FoxPro books; review newly obtained Visual Basic books; start review of additional references found by Landon search; search for historical Visual Basic programs used with Microsoft Excel; begin organizing references to Visual Basic programs | | | |
| | J COHEN | 4.10 hrs. | C320 | |
| 02/27/2011 | Status update to S. Cozad | | | |
| | M CICCARELLI | 0.80 hrs. | L120 | |
| 02/27/2011 | Meet with M. Ciccarelli to discuss status of invalidity contentions and strategy for invalidating the patent; begin review of references cited during prosecution | | | |
| | J COHEN | 1.20 hrs. | C320 | |
| 02/28/2011 | Continue review of references cited during prosecution of the '770 patent; review status of Southwest cases and strategies to coordinate efforts | | | |
| | J COHEN | 1.10 hrs. | B110 | |

Fees for Professional Services ........................................................................ $ 30,721.00

## Summary of Fees

| Name | Title | Hours | Rate/Hr | Amount |
|---|---|---|---|---|
| BRANDT, J | SENIOR PARTNER | 0.30 | $ 585.00 | $ 175.50 |
| CICCARELLI, M | SENIOR PARTNER | 7.20 | 530.00 | 3,816.00 |
| COHEN, J | ASSOCIATE | 66.80 | 345.00 | 23,046.00 |
| PATEL, V | ASSOCIATE | 9.80 | 315.00 | 3,087.00 |
| MURRELL, T | PARALEGAL | 0.70 | 210.00 | 147.00 |
| PAVEL, L | LEGAL SUPPORT | 2.90 | 155.00 | 449.50 |

## Reimbursable Costs

| | | | |
|---|---|---|---|
| 12/14/2010 | Other Charges - VENDOR: IP Data Corporation Fee for downloading patents | $ | 3.50 |
| 12/27/2010 | Meals - VENDOR: Max Ciccarelli Travel to San Diego to attend ENE | $ | 20.63 |
| 12/27/2010 | Travel - VENDOR: Max Ciccarelli Travel to San Diego to attend ENE | $ | 50.00 |
| 01/01/2011 | Other Charges - VENDOR: IP Data Corporation Payment of invoice 309301 | $ | 2.50 |
| 01/01/2011 | Other Charges - VENDOR: IP Data Corporation Payment of invoice 309578 | $ | 1.25 |

| | | | |
|---|---|---|---|
| 01/26/2011 | Other Charges - VENDOR: Max Ciccarelli Purchase of Mastering Excel 97 NPL | $ | 21.98 |
| 02/14/2011 | Copies - VENDOR: Justin Cohen Copies of prior art | $ | 75.94 |
| | Electronic Research | | 5.60 |
| | Other Charges | | 12.00 |

Total Reimbursable Costs ........................................................................................ $ 193.40

CURRENT FEES AND COSTS FOR THIS MATTER .................................................................. $ 30,914.40

TOTAL CURRENT DUE FOR THIS MATTER ................................................................................ $ 30,914.40

THOMPSON & KNIGHT LLP

ATTORNEYS AND COUNSELORS

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Page 1
August 31, 2011
Invoice 41387206

SOUTHWEST AIRLINES CO
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**INVOICE SUMMARY**

For Services Rendered Through July 31, 2011

Our Matter # 516441.000008
DEEP SKY SOFTWARE, INC.

| | | |
|---|---|---|
| Fees for Professional Services .......................................................... | $ | 322.00 |
| Reimbursable Costs ............................................................................ | | 67.04 |
| TOTAL CURRENT DUE FOR THIS MATTER ................................................ | $ | 389.04 |

Please remit payment within fifteen (15) days

Our Matter # 516441.000008
DEEP SKY SOFTWARE, INC.

| | | | |
|---|---|---|---|
| 07/18/2011 | Email to J. Almand and S. Cozad regarding status update on 770 patent reeexamination | | |
| | M CICCARELLI | 0.10 hrs. | L110 |
| 07/18/2011 | Review grant of reexamination request from Patent and Trademark Office (.3); correspond with M. Ciccarelli regarding same and strategy going forward (.3) | | |
| | J COHEN | 0.60 hrs. | L110 |
| 07/25/2011 | Review Inter Partes Reexamination communication from the U.S. Patent and Trademark Office; office conference with J. Murphy regarding same (.3); update files accordingly (.1) | | |
| | K NEWGENT | 0.40 hrs. | P280 |

Fees for Professional Services ................................................................ $ 322.00

**Summary of Fees**

| Name | Title | Hours | Rate/Hr | Amount |
|---|---|---|---|---|
| CICCARELLI, M | SENIOR PARTNER | 0.10 | $ 530.00 | $ 53.00 |
| COHEN, J | ASSOCIATE | 0.60 | 345.00 | 207.00 |
| NEWGENT, K | PARALEGAL | 0.40 | 155.00 | 62.00 |

**Reimbursable Costs**

| | |
|---|---|
| Data Storage Charges | 66.72 |
| Electronic Research | 0.32 |

Total Reimbursable Costs ........................................................................ $ 67.04

CURRENT FEES AND COSTS FOR THIS MATTER ................................................... $ 389.04

TOTAL CURRENT DUE FOR THIS MATTER ............................................................ $ 389.04

THOMPSON & KNIGHT LLP

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Page 1
October 31, 2011
Invoice 41393557

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## INVOICE SUMMARY

For Services Rendered Through September 30, 2011

Our Matter # 516441.000008
DEEP SKY SOFTWARE, INC.

| | | |
|---|---|---|
| Fees for Professional Services ............................................................ | $ | 0.00 |
| Reimbursable Costs ................................................................................ | | 66.72 |
| TOTAL CURRENT DUE FOR THIS MATTER ...................................................... | $ | 66.72 |

Please remit payment within fifteen (15) days

Our Matter # 516441.000008
DEEP SKY SOFTWARE, INC.

**Reimbursable Costs**

| | | |
|---|---|---|
| Data Storage Charges | | 66.72 |
| Total Reimbursable Costs ........................................ | $ | 66.72 |
| CURRENT FEES AND COSTS FOR THIS MATTER .................... | $ | 66.72 |
| TOTAL CURRENT DUE FOR THIS MATTER ........................ | $ | 66.72 |

THOMPSON & KNIGHT LLP

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Page 1
November 30, 2011
Invoice 41396960

SOUTHWEST AIRLINES CO
ATTN SUSANNE SULLIVAN
2702 LOVE FIELD DR
DALLAS, TX 75235

# INVOICE SUMMARY

For Services Rendered Through October 31, 2011

Our Matter # 516441.000008
DEEP SKY SOFTWARE, INC.

| | | |
|---|---|---|
| Fees for Professional Services ........................................................... | $ | 2,473.00 |
| Reimbursable Costs ............................................................................. | | 133.44 |
| TOTAL CURRENT DUE FOR THIS MATTER ................................................... | $ | 2,606.44 |

Please remit payment within fifteen (15) days

Our Matter # 516441.000008
DEEP SKY SOFTWARE, INC.

| | | | |
|---|---|---|---|
| 10/26/2011 | Review and analyze Deep Sky's response to the Patent Office's rejection of the claims of their '770 patent and discuss their arguments and a strategy for responding with M. Ciccarelli (1.5); correspond with J. Almand regarding same (0.2) | | |
| | J COHEN | 1.70 hrs. | L120 |
| 10/26/2011 | Meet with J. Cohen to work on strategy for Southwest's comments to Deep Sky's response to the Patent Office's rejection of Deep Sky's claims | | |
| | M CICCARELLI | 0.20 hrs. | L120 |
| 10/28/2011 | Preparing to draft comments to Deep Sky's office action response, including researching recent case law regarding conception and reduction to practice in order to invalidate Deep Sky's declaration swearing behind one of our prior art references | | |
| | J COHEN | 2.40 hrs. | L120 |
| 10/31/2011 | Prepare to draft comments to Deep Sky's office action response, including outline of issues and potential arguments | | |
| | J COHEN | 2.70 hrs. | L250 |
| 10/31/2011 | Review file e-mail and attachments for docketing information and content | | |
| | T MURRELL | 0.10 hrs. | L140 |

Fees for Professional Services ........................................................................ $ 2,473.00

**Summary of Fees**

| Name | Title | Hours | Rate/Hr | Amount |
|---|---|---|---|---|
| CICCARELLI, M | PARTNER | 0.20 | $ 530.00 | $ 106.00 |
| COHEN, J | ASSOCIATE | 6.80 | 345.00 | 2,346.00 |
| MURRELL, T | PARALEGAL | 0.10 | 210.00 | 21.00 |

**Reimbursable Costs**

Data Storage Charges 133.44

Total Reimbursable Costs ........................................................................ $ 133.44

CURRENT FEES AND COSTS FOR THIS MATTER ........................................................ $ 2,606.44

TOTAL CURRENT DUE FOR THIS MATTER ........................................................ $ 2,606.44

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Page 1
June 30, 2012
Invoice 41417377

SOUTHWEST AIRLINES CO
ATTN SUSANNE SULLIVAN
2702 LOVE FIELD DR
DALLAS, TX 75235

# INVOICE SUMMARY

For Services Rendered Through May 31, 2012

Our Matter # 516441.000008
DEEP SKY SOFTWARE, INC.

| | | |
|---|---|---|
| Fees for Professional Services .......................................................... | $ | 2,080.80 |
| Reimbursable Costs .......................................................................... | | 66.72 |
| TOTAL CURRENT DUE FOR THIS MATTER .................................................... | $ | 2,147.52 |

Please remit payment within fifteen (15) days

Our Matter # 516441.000008
DEEP SKY SOFTWARE, INC.

| | | | |
|---|---|---|---|
| 05/02/2012 | Correspond with J. Alman [redacted] | | |
| | J COHEN | 0.50 hrs. | L110 |
| 05/03/2012 | Perform status check on patent application no. 95/000,625, a re-examination of patent no. 6,738,770; obtain documents submitted to U.S. Patent and Trademark Office for file. | | |
| | C HOLLAND | 0.90 hrs. | L120 |
| 05/07/2012 | Review and revise case update | | |
| | M CICCARELLI | 0.20 hrs. | L190 |
| 05/24/2012 | Perform status check on re-examination No. 95 / 00,626 of patent No. 7, 370,047 | | |
| | C HOLLAND | 0.30 hrs. | L120 |
| 05/25/2012 | Analyze correspondence from the Patent Office regarding the reexam of the '047 patent (0.5); conference with M. Ciccarelli regarding same (0.1); research options for Deep Sky and procedure in reexaminations following the office action (0.5) | | |
| | J COHEN | 1.10 hrs. | L250 |
| 05/29/2012 | Research strategies and Patent Office rules for a mechanism to bring the recent office action in the reexam for the '047 to the attention of the examiner in the reexam of the '770 patent | | |
| | J COHEN | 1.30 hrs. | L120 |
| 05/29/2012 | Correspond with A. Mayeux regarding a recent office action from the Patent Office regarding the reexamination of the '047 patent, including a brief summary of the status of the case and reexamination proceedings | | |
| | J COHEN | 0.30 hrs. | L250 |
| 05/30/2012 | Prepare summary of research and proposed courses of action for M. Ciccarelli regarding how a third party requester in an inter partes reexam can cite an office action from one reexam to another so that we can bring the recent office action from the '047 reexam to the attention of the Examiner handling the reexam of the '770 patent | | |
| | J COHEN | 0.60 hrs. | L120 |
| 05/31/2012 | Meet with J. Cohen to discuss strategy in connection with Deep Sky's failure to submit office action in 047 reexam in the 770 reexam | | |
| | M CICCARELLI | 0.20 hrs. | L120 |
| 05/31/2012 | Conference with M. Ciccarelli regarding strategies for notifying the Examiner handling the '770 patent reexamination about the recent office action in the reexamination of the '047 patent (0.2); prepare draft letter to Deep Sky informing them of their duty to disclose the recent office action (0.3) | | |
| | J COHEN | 0.50 hrs. | L250 |

Fees for Professional Services ........................................................................ $ 2,080.80

**Summary of Fees**

| Name | Title | Hours | Rate/Hr | Amount |
|---|---|---|---|---|
| CICCARELLI, M | PARTNER | 0.40 | $ 550.00 | $ 220.00 |
| COHEN, J | ASSOCIATE | 4.30 | 380.00 | 1,634.00 |
| HOLLAND, C | PARALEGAL | 1.20 | 189.00 | 226.80 |

**Reimbursable Costs**

| | |
|---|---|
| Data Storage Charges | 66.72 |
| Total Reimbursable Costs | $ 66.72 |
| CURRENT FEES AND COSTS FOR THIS MATTER | $ 2,147.52 |
| TOTAL CURRENT DUE FOR THIS MATTER | $ 2,147.52 |

THOMPSON & KNIGHT LLP

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Page 1
July 31, 2012
Invoice 41419972

SOUTHWEST AIRLINES CO
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DALLAS, TX 75235

# INVOICE SUMMARY

For Services Rendered Through June 30, 2012

Our Matter # 516441.000008
DEEP SKY SOFTWARE, INC.

| | | |
|---|---|---|
| Fees for Professional Services ........................................................ | $ | 1,961.80 |
| Reimbursable Costs ........................................................................ | | 66.72 |
| TOTAL CURRENT DUE FOR THIS MATTER ............................................... | $ | 2,028.52 |

Please remit payment within fifteen (15) days

Our Matter # 516441.000008
DEEP SKY SOFTWARE, INC.

| | | | |
|---|---|---|---|
| 06/01/2012 | Conference with M. Ciccarelli regarding draft letter (0.1); review, revise, and send letter to opposing counsel regarding their duty to disclose the recent office action involving the '047 patent to the Examiner handling the reexamination of the '770 patent (0.3) | | |
| | J COHEN | 0.40 hrs. | L250 |
| 06/05/2012 | Review filing by Deep Sky notifying the Patent Office about the recent office action in the reexamination of the '047 patent and correspond with M. Ciccarelli and opposing counsel regarding same | | |
| | J COHEN | 0.20 hrs. | L250 |
| 06/12/2012 | Prepare memo regarding USAU's coverage letter regarding Deep Sky matter | | |
| | J HEINLEN | 0.40 hrs. | L120 |
| 06/12/2012 | Meet with M. Heinlen regarding insurance coverage for IP cases [redacted] | | |
| | M CICCARELLI | 0.40 hrs. | L120 |
| 06/14/2012 | Research whether recent enactment of the America Invents Act affected the appeals process in inter partes reexaminations (0.3); research appeals process in inter partes reexaminations including timing issues and appeals as of right to court (0.6); respond to question from A. Mayeux regarding the same (0.3) | | |
| | J COHEN | 1.20 hrs. | L120 |
| 06/25/2012 | Perform status check on patent re-examination | | |
| | C HOLLAND | 0.20 hrs. | P260 |
| 06/26/2012 | Review and analyze Deep Sky's office action response, declaration, and newly filed evidence (0.8); search for case law and PTO decisions denying entry of late filed declarations and evidence in inter partes reexaminations after the ACP (action closing prosecution) (1.4) | | |
| | J COHEN | 2.20 hrs. | L250 |

Fees for Professional Services ........................................................................ $ 1,961.80

## Summary of Fees

| Name | Title | Hours | Rate/Hr | Amount |
|---|---|---|---|---|
| CICCARELLI, M | PARTNER | 0.40 | $ 550.00 | $ 220.00 |
| HEINLEN, J | PARTNER | 0.40 | 460.00 | 184.00 |
| COHEN, J | ASSOCIATE | 4.00 | 380.00 | 1,520.00 |
| HOLLAND, C | PARALEGAL | 0.20 | 189.00 | 37.80 |

## Reimbursable Costs

Data Storage Charges 66.72

Total Reimbursable Costs ........................................................................ $ 66.72

CURRENT FEES AND COSTS FOR THIS MATTER ........................................................ $ 2,028.52

TOTAL CURRENT DUE FOR THIS MATTER ........................................................ $ 2,028.52

**THOMPSON & KNIGHT LLP**

ATTORNEYS AND COUNSELORS

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Page 1
July 31, 2012
Invoice 41419980

SOUTHWEST AIRLINES CO
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DALLAS, TX 75235

# INVOICE SUMMARY

For Services Rendered Through June 30, 2012

Our Matter # 516441.000008
DEEP SKY SOFTWARE, INC.

| | | |
|---|---|---|
| Fees for Professional Services ............................................................$ | | 1,961.80 |
| Reimbursable Costs ............................................................................ | | 66.72 |
| TOTAL CURRENT DUE FOR THIS MATTER ............................................... | $ | 2,028.52 |

Please remit payment within fifteen (15) days

Our Matter # 516441.000008
DEEP SKY SOFTWARE, INC.

| | | | |
|---|---|---|---|
| 06/01/2012 | Conference with M. Ciccarelli regarding draft letter (0.1); review, revise, and send letter to opposing counsel regarding their duty to disclose the recent office action involving the '047 patent to the Examiner handling the reexamination of the '770 patent (0.3) | | |
| | J COHEN | 0.40 hrs. | L250 |
| 06/05/2012 | Review filing by Deep Sky notifying the Patent Office about the recent office action in the reexamination of the '047 patent and correspond with M. Ciccarelli and opposing counsel regarding same | | |
| | J COHEN | 0.20 hrs. | L250 |
| 06/12/2012 | Prepare memo regarding USAU's coverage letter regarding Deep Sky matter | | |
| | J HEINLEN | 0.40 hrs. | L120 |
| 06/12/2012 | Meet with M. Heinlen regarding insurance coverage for IP cases [redacted] | | |
| | M CICCARELLI | 0.40 hrs. | L120 |
| 06/14/2012 | Research whether recent enactment of the America Invents Act affected the appeals process in inter partes reexaminations (0.3); research appeals process in inter partes reexaminations including timing issues and appeals as of right to court (0.6); respond to question from A. Mayeux regarding the same (0.3) | | |
| | J COHEN | 1.20 hrs. | L120 |
| 06/25/2012 | Perform status check on patent re-examination | | |
| | C HOLLAND | 0.20 hrs. | L120 |
| 06/26/2012 | Review and analyze Deep Sky's office action response, declaration, and newly filed evidence (0.8); search for case law and PTO decisions denying entry of late filed declarations and evidence in inter partes reexaminations after the ACP (action closing prosecution) (1.4) | | |
| | J COHEN | 2.20 hrs. | L250 |

Fees for Professional Services ........ $ 1,961.80

**Summary of Fees**

| Name | Title | Hours | Rate/Hr | Amount |
|---|---|---|---|---|
| CICCARELLI, M | PARTNER | 0.40 | $ 550.00 | $ 220.00 |
| HEINLEN, J | PARTNER | 0.40 | 460.00 | 184.00 |
| COHEN, J | ASSOCIATE | 4.00 | 380.00 | 1,520.00 |
| HOLLAND, C | PARALEGAL | 0.20 | 189.00 | 37.80 |

**Reimbursable Costs**

Data Storage Charges 66.72

Total Reimbursable Costs ........ $ 66.72

CURRENT FEES AND COSTS FOR THIS MATTER ........ $ 2,028.52

TOTAL CURRENT DUE FOR THIS MATTER ........ $ 2,028.52

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Page 1
February 28, 2013
Invoice 41440713

SOUTHWEST AIRLINES CO
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DALLAS TX 75235

# INVOICE SUMMARY

For Services Rendered Through January 31, 2013

Our Matter # 516441.000008
DEEP SKY SOFTWARE, INC.

| | | |
|---|---|---|
| Fees for Professional Services ............................................................$ | 1,162.50 | |
| Reimbursable Costs ............................................................................ | 0.00 | |
| TOTAL CURRENT DUE FOR THIS MATTER .................................................... | | $ 1,162.50 |

Please remit payment within fifteen (15) days

Our Matter # 516441.000008
DEEP SKY SOFTWARE, INC.

| | | | |
|---|---|---|---|
| 01/02/2013 | Correspond with M. Ciccarelli and A. Mayeux regarding responding to Deep Sky's settlement offer | | |
| | J COHEN | 0.30 hrs. | L160 |
| 01/02/2013 | Review and revise email to A. Mayeux regarding settlement proposal from Deep Sky | | |
| | M CICCARELLI | 0.20 hrs. | L160 |
| 01/04/2013 | Communications with A. Mayeux regarding settlement (.1); [redacted] | | |
| | M CICCARELLI | 0.30 hrs. | L160 |
| 01/10/2013 | Prepare draft email response to Deep Sky's settlement offer | | |
| | J COHEN | 0.40 hrs. | L160 |
| 01/11/2013 | Review, revise, and finalize draft response to Deep Sky's settlement offer for further review by M. Ciccarelli | | |
| | J COHEN | 0.30 hrs. | L160 |
| 01/11/2013 | Revise email to Deep Sky regarding settlement counter-offer | | |
| | M CICCARELLI | 0.50 hrs. | L160 |
| 01/23/2013 | Communications with J. Pettit (Deep Sky) regarding settlement | | |
| | M CICCARELLI | 0.10 hrs. | L160 |
| 01/28/2013 | Communications with Deep Sky regarding settlement | | |
| | M CICCARELLI | 0.10 hrs. | L160 |
| 01/29/2013 | Communications with plaintiff's counsel regarding settlement | | |
| | M CICCARELLI | 0.10 hrs. | L160 |

Fees for Professional Services ........................................................................ $ 1,162.50

## Summary of Fees

| Name | Title | Hours | Rate/Hr | Amount |
|---|---|---|---|---|
| CICCARELLI, M | PARTNER | 1.30 | $ 575.00 | $ 747.50 |
| COHEN, J | ASSOCIATE | 1.00 | 415.00 | 415.00 |

CURRENT FEES AND COSTS FOR THIS MATTER ..................................................... $ 1,162.50

TOTAL CURRENT DUE FOR THIS MATTER ............................................................ $ 1,162.50

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Page 1
May 31, 2013
Invoice 41449710

SOUTHWEST AIRLINES CO
ATTN STACY COZAD
2702 LOVE FIELD DR
DALLAS TX 75235

## INVOICE SUMMARY

For Services Rendered Through April 30, 2013

Our Matter # 516441.000008
DEEP SKY SOFTWARE, INC.

| | | |
|---|---|---|
| Fees for Professional Services .......................................................... | $ 60.00 | |
| Reimbursable Costs ........................................................................... | 0.00 | |
| TOTAL CURRENT DUE FOR THIS MATTER .................................................. | | $ 60.00 |

Please remit payment within fifteen (15) days

Our Matter # 516441.000008
DEEP SKY SOFTWARE, INC.

04/15/2013 Perform status check for Deep Sky Software patent reexamination of Patent No. 7,370,047 and No. 6,738,770
C HOLLAND 0.30 hrs. P260

Fees for Professional Services ........................................ $ 60.00

**Summary of Fees**

| Name | Title | Hours | Rate/Hr | Amount |
|---|---|---|---|---|
| HOLLAND, C | PARALEGAL | 0.30 | $ 200.00 | $ 60.00 |

CURRENT FEES AND COSTS FOR THIS MATTER ........................................ $ 60.00

TOTAL CURRENT DUE FOR THIS MATTER ........................................ $ 60.00

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Page 1
August 31, 2014
Invoice 41492596

SOUTHWEST AIRLINES CO
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# INVOICE SUMMARY

For Services Rendered Through July 31, 2014

Our Matter # 516441.000008
DEEP SKY SOFTWARE, INC.

| | |
|---|---|
| Fees for Professional Services ........................................................$ | 644.85 |
| Reimbursable Costs ........................................................................... | 1,200.00 |

TOTAL CURRENT DUE FOR THIS MATTER ................................................... $ 1,844.85

Please remit payment within fifteen (15) days

Our Matter # 516441.000008
DEEP SKY SOFTWARE, INC.

| | | | |
|---|---|---|---|
| 05/02/2014 | Analyze opinion from the Patent Trial and Appeal Board regarding the '047 patent (0.3); correspond with A. Mayeux regarding same (0.2) | | |
| | J COHEN | 0.50 hrs. | L500 |
| 06/26/2014 | Communications with local counsel regarding status update to the court | | |
| | M CICCARELLI | 0.10 hrs. | L110 |
| 06/30/2014 | Draft joint status report for the court and correspond with M. Ciccarelli regarding same | | |
| | J COHEN | 0.50 hrs. | L250 |
| 07/01/2014 | Review order from the court maintaining the stay and docketing due date for next status update | | |
| | J COHEN | 0.30 hrs. | L250 |

Fees for Professional Services ........................................................................ $ 644.85

**Summary of Fees**

| Name | Title | Hours | Rate/Hr | Amount |
|---|---|---|---|---|
| CICCARELLI, M | PARTNER | 0.10 | $ 598.50 | $ 59.85 |
| COHEN, J | ASSOCIATE | 1.30 | 450.00 | 585.00 |

**Reimbursable Costs**

| | | |
|---|---|---|
| 05/01/2014 | Filing Fees - VENDOR: Commissioner of Patents and Trademarks - Credit for Notice of Appeal, 4/28/14 | $ (800.00) |
| 05/01/2014 | Filing Fees - VENDOR: Commissioner of Patents and Trademarks - Filing a brief in support of an appeal in an inter parties reexmination proceeding, 4/28/14 | $ 2,000.00 |

Total Reimbursable Costs ........................................................................ $ 1,200.00

CURRENT FEES AND COSTS FOR THIS MATTER ........................................................ $ 1,844.85

TOTAL CURRENT DUE FOR THIS MATTER ........................................................ $ 1,844.85

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Page 1
January 16, 2015
Invoice 41505807

SOUTHWEST AIRLINES CO
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# INVOICE SUMMARY

For Services Rendered Through December 31, 2014

Our Matter # 516441.000008
DEEP SKY SOFTWARE, INC.

| | | |
|---|---|---|
| Fees for Professional Services ............................................................$ | 5,861.25 | |
| Reimbursable Costs ............................................................................ | 0.00 | |
| TOTAL CURRENT DUE FOR THIS MATTER ................................................... | | $ 5,861.25 |

Please remit payment within fifteen (15) days

Our Matter # 516441.000008
DEEP SKY SOFTWARE, INC.

| | | | |
|---|---|---|---|
| 12/01/2014 | Analyze decision from Patent Trial and Appeal Board regarding the '770 Patent (0.6); correspond and conference with M. Ciccarelli regarding same and issues involved in a motion for attorneys' fees (0.8); correspond with opposing counsel regarding PTAB decision and date for next status conference (0.2); review settlement positions to determine the likelihood of Southwest prevailing on a motion for attorneys' fees (0.5) | | |
| | J COHEN | 2.10 hrs. | L500 |
| 12/01/2014 | Review Patent Trial and Appeal Board decision on appeal of 770 patent reexam affirming the examiner's decision that the claims at issue are invalid | | |
| | M CICCARELLI | 0.10 hrs. | L500 |
| 12/01/2014 | Meet with J. Cohen to discuss strategy in light of Patent Trial and Appeal Board decision on appeal of 770 patent reexam affirming the examiner's decision that the claims at issue are invalid, including discussion of recovery of attorney's fees and whether we need to notify the court (has the reexam been "resolved?") and reaching out to plaintiff's counsel to determine their intentions | | |
| | M CICCARELLI | 0.50 hrs. | L120 |
| 12/01/2014 | Review selected past communications with DeepSky's counsel to better evaluate the option of seeking attorney's fees | | |
| | M CICCARELLI | 0.60 hrs. | L190 |
| 12/04/2014 | Research case law regarding whether Southwest can seek attorneys' fees for time spent prosecuting the reexaminations | | |
| | J COHEN | 1.70 hrs. | L250 |
| 12/08/2014 | Research exceptional cases regarding reexaminations | | |
| | J COHEN | 1.30 hrs. | L250 |
| 12/10/2014 | Review research materials regarding seeking attorneys' fees in patent cases involving reexaminations (1.6); correspond with M. Ciccarelli regarding same (0.6) | | |
| | J COHEN | 2.20 hrs. | L250 |
| 12/10/2014 | Review results of research by J. Cohen regarding issues related to recovery of attorney's fees; meet with J. Cohen regarding strategy for recovering attorney's fees | | |
| | M CICCARELLI | 0.50 hrs. | L120 |
| 12/11/2014 | Meet with J. Cohen regarding strategy and cost estimates for seeking attorney's fees | | |
| | M CICCARELLI | 0.30 hrs. | L120 |
| 12/11/2014 | Call with A. Mayeux to discuss whether to seek, and strategy for seeking, attorney's fees | | |
| | M CICCARELLI | 0.20 hrs. | L120 |
| 12/11/2014 | Analyze past settlement discussion communications with opposing counsel to determine impact on request for fees and to evaluate best approach to try to have plaintiff pay (a portion of) the fees without need of a motion | | |
| | M CICCARELLI | 0.20 hrs. | L160 |
| 12/11/2014 | Communications with opposing counsel regarding settlement and trying to set up a call to discuss attorney fee issue | | |
| | M CICCARELLI | 0.10 hrs. | L120 |
| 12/11/2014 | Conference and correspond with M. Ciccarelli regarding seeking attorneys' fees against Deep Sky (0.9); correspond with opposing counsel regarding upcoming status report to the court (0.2); outline arguments supporting motion for attorneys' fees (0.6) | | |
| | J COHEN | 1.70 hrs. | L250 |
| 12/12/2014 | Conference with M. Ciccarelli [redacted] conference with counsel for Deep Sky regarding seeking attorneys' fees (0.4) | | |
| | J COHEN | 0.70 hrs. | L250 |

Fees for Professional Services .................................................................................. $ 5,861.25

**Summary of Fees**

| Name | Title | Hours | Rate/Hr | Amount |
|---|---|---|---|---|
| CICCARELLI, M | PARTNER | 2.50 | $ 598.50 | $ 1,496.25 |
| COHEN, J | ASSOCIATE | 9.70 | 450.00 | 4,365.00 |

CURRENT FEES AND COSTS FOR THIS MATTER ................................................................... $ 5,861.25

TOTAL CURRENT DUE FOR THIS MATTER ............................................................................ $ 5,861.25

THOMPSON & KNIGHT LLP
ATTORNEYS AND COUNSELORS

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(214) 969-1700
FAX (214) 969-1751
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<INS>

TOTAL CURRENT DUE FOR THIS MATTER .................................................... $ 6,118.55

Please remit payment within fifteen (15) days

THOMPSON & KNIGHT
LLP

Our Matter # 516441.000008
DEEP SKY SOFTWARE, INC.

| | | | |
|---|---|---|---|
| 01/06/2015 | Correspond with opposing counsel regarding the upcoming status report deadline (0.2); correspond with local counsel J. Giust regarding same (0.2); outline status report (0.3) | | |
| | J COHEN | 0.70 hrs. | L250 |
| 01/07/2015 | Meet with J. Cohen regarding strategy for joint report to court regarding status of case and the stay | | |
| | M CICCARELLI | 0.10 hrs. | L120 |
| 01/08/2015 | Review and revise joint status report to the Court | | |
| | M CICCARELLI | 0.10 hrs. | L250 |
| 01/08/2015 | Conference with M. Ciccarelli and J. Giust regarding the status report and attorneys' fees motion (0.4); draft joint status report (0.5); correspond with M. Ciccarelli and J. Giust regarding same (0.3); finalize draft status report for further review by Deep Sky (0.3); prepare pro hac vice application (0.3) | | |
| | J COHEN | 1.80 hrs. | L250 |
| 01/09/2015 | Prepare revise draft status report for the court (0.3); correspond with opposing counsel regarding same (0.2); finalize and file the joint status report (0.3) | | |
| | J COHEN | 0.80 hrs. | L250 |
| 01/12/2015 | Conference and correspond with M. Ciccarelli regarding the attorneys' fees motion | | |
| | J COHEN | 0.60 hrs. | L250 |
| 01/12/2015 | Emails to, and meeting with, J. Cohen with thoughts about strategy [redacted] | | |
| | M CICCARELLI | 0.40 hrs. | L120 |
| 01/19/2015 | Prepare draft email to Deep Sky regarding resolving the lawsuit without resorting to filing the motion for attorneys' fees for further review by M. Ciccarelli | | |
| | J COHEN | 0.60 hrs. | L250 |
| 01/23/2015 | Outline motion for attorneys' fees | | |
| | J COHEN | 1.30 hrs. | L250 |
| 01/26/2015 | Outline motion for attorneys' fees, including reviewing and selecting potential exhibits | | |
| | J COHEN | 2.30 hrs. | L250 |
| 01/31/2015 | Draft motion for attorneys' fees | | |
| | J COHEN | 3.40 hrs. | L250 |

Fees for Professional Services ........................................................................ $ 5,912.55

**Summary of Fees**

| Name | Title | Hours | Rate/Hr | Amount |
|---|---|---|---|---|
| CICCARELLI, M | PARTNER | 0.60 | $ 625.50 | $ 375.30 |
| COHEN, J | ASSOCIATE | 11.50 | 481.50 | 5,537.25 |

**Reimbursable Costs**

| | | | |
|---|---|---|---|
| 01/12/2015 | Other Charges - - VENDOR: Justin Cohen Fee for pro hac vice application | $ | 206.00 |
| | Total Reimbursable Costs | $ | 206.00 |
| CURRENT FEES AND COSTS FOR THIS MATTER | | $ | 6,118.55 |
| TOTAL CURRENT DUE FOR THIS MATTER | | $ | 6,118.55 |

**THOMPSON & KNIGHT LLP**
ATTORNEYS AND COUNSELORS

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March 26, 2015
Invoice 41511785

SOUTHWEST AIRLINES CO
ATTN STACY COZAD
2702 LOVE FIELD DR
DALLAS TX 75235

## REMITTANCE COPY

For Services Rendered Through February 28, 2015

Our Matter # 516441.000008
DEEP SKY SOFTWARE, INC.

| | | |
|---|---|---|
| Fees for Professional Services ..........................................................$ | 55,616.85 | |
| Reimbursable Costs ............................................................................ | 184.30 | |
| Professional Discount ......................................................................... | -15,205.65 | |
| TOTAL CURRENT DUE FOR THIS MATTER........................................................ | | $40,595.50 |

Please remit payment within fifteen (15) days to

**Wiring Instructions for Thompson & Knight LLP**

Receiving Bank: Amegy Bank of Texas
4400 Post Oak Parkway
Houston, TX 77027

Beneficiary Account Name: Thompson & Knight LLP
Beneficiary Address: One Arts Plaza
1722 Routh St Ste 1500
Dallas, Texas 75201

ABA Routing No. 113011258
Account No.: 3324389
SWIFT: SWBKUS44

Thank you for informing us of the date of transaction by fax/email.

**Mailing Instructions for Thompson & Knight LLP**

P.O. BOX 660684, DALLAS, TX 75266-0684

To ensure proper credit please return this copy with your remittance.
Please reference client/matter name and number, attorney name, invoice number, etc.

**THOMPSON & KNIGHT LLP**
ATTORNEYS AND COUNSELORS

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Page 1
March 26, 2015
Invoice 41511785

SOUTHWEST AIRLINES CO
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2702 LOVE FIELD DR
DALLAS TX 75235

## INVOICE SUMMARY

For Services Rendered Through February 28, 2015

Our Matter # 516441.000008
DEEP SKY SOFTWARE, INC.

| | | |
|---|---|---|
| Fees for Professional Services ........................................................$ | 55,616.85 | |
| Reimbursable Costs ........................................................................... | 184.30 | |
| Professional Discount ....................................................................... | -15,205.65 | |
| TOTAL CURRENT DUE FOR THIS MATTER ................................................... | | $ 40,595.50 |

Please remit payment within fifteen (15) days

Our Matter # 516441.000008
DEEP SKY SOFTWARE, INC.

| | | | |
|---|---|---|---|
| 02/01/2015 | Draft motion for attorneys fees | | |
| | J COHEN | 4.30 hrs. | L250 |
| 02/02/2015 | Draft motion for attorneys fees | | |
| | J COHEN | 6.80 hrs. | L250 |
| 02/03/2015 | Conference with M. Ciccarelli regarding the draft motion for attorneys' fees (0.4); review and revise draft motion per suggestions from M. Ciccarelli (3.7); conference with M. Ciccarelli and M. Heinlen (0.3); review and revise draft motion per suggestions from M. Ciccarelli (3.3) | | |
| | J COHEN | 7.70 hrs. | L250 |
| 02/03/2015 | Review and revise draft of brief asking to declare case to be an exceptional case (as set up for request for attorney's fees) | | |
| | M CICCARELLI | 1.80 hrs. | L250 |
| 02/03/2015 | Meet with J. Cohen regarding draft of brief asking to declare case to be an exceptional case (as set up for request for attorney's fees) | | |
| | M CICCARELLI | 0.70 hrs. | L250 |
| 02/04/2015 | Review draft of motion to declare the case exceptional (foundation for award of fees); meet with J. Cohen to discuss modifications to same; meet with M. Heinlen regarding same; review updated draft and discuss same with M. Heinlen; discuss same with J. Cohen | | |
| | M CICCARELLI | 2.80 hrs. | L250 |
| 02/04/2015 | Review and analyze draft motion for attorneys' fees; research regarding same | | |
| | J HEINLEN | 1.40 hrs. | L250 |
| 02/04/2015 | Review and revise draft motion (2.2); prepare and organize exhibits (1.2); conference with M. Ciccarelli and M. Heinlen (0.3); review and revise draft motion per discussion (2.1); prepare draft claim chart for VSFlexGrid (1.1) | | |
| | J COHEN | 6.90 hrs. | L250 |
| 02/05/2015 | Conference and correspond with M. Ciccarelli and M. Heinlen (0.5); search for supporting case law (1.6) | | |
| | J COHEN | 2.10 hrs. | L250 |
| 02/05/2015 | Prepare exhibits for Motion for Attorneys' Fees | | |
| | S GUNDER | 4.70 hrs. | L250 |
| 02/05/2015 | Prepare motion for attorneys' fees | | |
| | J HEINLEN | 11.70 hrs. | L250 |
| 02/05/2015 | Review and revise latest draft of motion to find the case exceptional (foundation for award of attorneys fees); various meetings with J. Cohen and M. Heinlen regarding same | | |
| | M CICCARELLI | 4.50 hrs. | L250 |
| 02/06/2015 | Continue revising brief; various meetings with M. Heinlen regarding same | | |
| | M CICCARELLI | 3.20 hrs. | L250 |
| 02/06/2015 | Prepare motion for attorneys fees | | |
| | J HEINLEN | 10.70 hrs. | L250 |
| 02/06/2015 | Prepare appendix for motion for attorneys fees | | |
| | S GUNDER | 6.20 hrs. | L250 |
| 02/06/2015 | Conference and correspond with M. Ciccarelli and M. Heinlen regarding the draft motion (0.7); search for supporting case law (0.6); review citations to the record (1.1); correspond with local counsel J. Giust (0.3); finalize and file brief and appendix (1.2) | | |
| | J COHEN | 3.90 hrs. | L250 |
| 02/09/2015 | Prepare courts courtesy copy of appendix to motion for attorneys' fees; transmit same | | |
| | S GUNDER | 1.60 hrs. | L430 |

| | | | |
|---|---|---|---|
| 02/09/2015 | Prepare post-filing material related to motion for attorneys' fees | | |
| | J HEINLEN | 1.50 hrs. | L250 |
| 02/09/2015 | Consider revisions to motion for fees to increase chances of the judge granting same and discuss with team; communications with local counsel regarding same | | |
| | M CICCARELLI | 1.50 hrs. | L250 |
| 02/09/2015 | Conference and correspond with M. Ciccarelli, M. Heinlen, and local counsel J. Giust regarding various requirements in the local rules for motions ([redacted] | | |
| | J COHEN | 1.10 hrs. | L250 |
| 02/20/2015 | Initial review of Deep Sky's response to our motion for attorneys' fees | | |
| | J COHEN | 0.40 hrs. | L250 |
| 02/22/2015 | Review Deep Sky's response to our motion for fees and provide comments to M. Heinlen | | |
| | M CICCARELLI | 0.80 hrs. | L250 |
| 02/23/2015 | Review and analyze Deep Sky's response to motion for attorneys' fees | | |
| | J HEINLEN | 1.00 hrs. | L250 |
| 02/23/2015 | Consider comments by M. Heinlen regarding Deep Sky's response to motion for fees; provide additional comments in response | | |
| | M CICCARELLI | 1.10 hrs. | L250 |
| 02/23/2015 | Email to A. Mayeux enclosing copy of Deep Sky's response to our motion for attorney fees and providing comments | | |
| | M CICCARELLI | 0.10 hrs. | L250 |
| 02/23/2015 | Review past document production by Deep Sky [redacted] | | |
| | M CICCARELLI | 3.50 hrs. | L320 |
| 02/23/2015 | Communications with team regarding information from past document production by DeepSky [redacted] | | |
| | M CICCARELLI | 0.30 hrs. | L250 |
| 02/23/2015 | Research allegations in Deep Sky's response to our motion for attorneys' fees (0.7); correspond with M. Ciccarelli and M. Heinlen regarding same (0.4) | | |
| | J COHEN | 1.10 hrs. | L250 |
| 02/24/2015 | Prepare reply in support of motion for attorneys' fees | | |
| | J HEINLEN | 2.40 hrs. | L250 |
| 02/25/2015 | Prepare reply in support of motion for attorneys' fees | | |
| | J HEINLEN | 7.10 hrs. | L250 |
| 02/26/2015 | Prepare reply in support of motion for attorneys fees | | |
| | J HEINLEN | 6.70 hrs. | L250 |
| 02/27/2015 | Prepare reply in support of motion for attorneys' fees | | |
| | J HEINLEN | 0.40 hrs. | L250 |
| 02/27/2015 | Conference with M. Heinlen regarding draft reply in support of our motion for attorneys' fees (0.3); review and file reply (0.4) | | |
| | J COHEN | 0.70 hrs. | L250 |

Fees for Professional Services ........................................................................ $ 55,616.85

**Summary of Fees**

| Name | Title | Hours | Rate/Hr | Amount |
|---|---|---|---|---|
| CICCARELLI, M | PARTNER | 20.30 | $ 625.50 | $ 12,697.65 |
| HEINLEN, J | PARTNER | 42.90 | 535.50 | 22,972.95 |

| Name | Title | Hours | Rate/Hr | Amount |
|---|---|---|---|---|
| COHEN, J | ASSOCIATE | 35.00 | 481.50 | 16,852.50 |
| GUNDER, S | PARALEGAL | 12.50 | 247.50 | 3,093.75 |

**Reimbursable Costs**

| | |
|---|---|
| Delivery Charges | 35.77 |
| Reprographics | 148.53 |

| | |
|---|---|
| Total Reimbursable Costs | $ 184.30 |
| PROFESSIONAL DISCOUNT | $ -15,205.65 |
| CURRENT FEES AND COSTS FOR THIS MATTER | $ 40,595.50 |
| TOTAL CURRENT DUE FOR THIS MATTER | $ 40,595.50 |

THOMPSON & KNIGHT LLP
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Page 1
April 29, 2015
Invoice 41514987

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## INVOICE SUMMARY

For Services Rendered Through March 31, 2015

Our Matter # 516441.000008
DEEP SKY SOFTWARE, INC.

| | | |
|---|---|---|
| Fees for Professional Services .......................................................$ | 437.85 | |
| Reimbursable Costs ........................................................................... | 0.00 | |
| TOTAL CURRENT DUE FOR THIS MATTER ................................................... | | $ 437.85 |

Please remit payment within fifteen (15) days

Our Matter # 516441.000008
DEEP SKY SOFTWARE, INC.

| | | | |
|---|---|---|---|
| 02/27/2015 | Review reply brief<br>M CICCARELLI | 0.70 hrs. | L250 |

Fees for Professional Services ........................................................................ $ 437.85

**Summary of Fees**

| Name | Title | Hours | Rate/Hr | Amount |
|---|---|---|---|---|
| CICCARELLI, M | PARTNER | 0.70 | $ 625.50 | $ 437.85 |

CURRENT FEES AND COSTS FOR THIS MATTER ...................................................... $ 437.85

TOTAL CURRENT DUE FOR THIS MATTER ............................................................... $ 437.85

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Page 1
May 28, 2015
Invoice 41517548

SOUTHWEST AIRLINES CO
ATTN STACY COZAD
2702 LOVE FIELD DR
DALLAS TX 75235

# INVOICE SUMMARY

For Services Rendered Through April 30, 2015

Our Matter # 516441.000008
DEEP SKY SOFTWARE, INC.

| | | |
|---|---|---|
| Fees for Professional Services ........................................................$ | 1,733.40 | |
| Reimbursable Costs ........................................................................ | 0.00 | |
| TOTAL CURRENT DUE FOR THIS MATTER ................................................ | | $ 1,733.40 |

Please remit payment within fifteen (15) days

Our Matter # 516441.000008
DEEP SKY SOFTWARE, INC.

| | | | |
|---|---|---|---|
| 04/13/2015 | Follow up with local counsel regarding timing of ruling on motion for fees | | |
| | M CICCARELLI | 0.10 hrs. | L500 |
| 04/17/2015 | Communications with local counsel regarding timing of ruling on motion for fees | | |
| | M CICCARELLI | 0.10 hrs. | L500 |
| 04/21/2015 | Review correspondence from the PTO regarding the finalization of the reexamination of the '770 Patent | | |
| | J COHEN | 0.30 hrs. | L500 |
| 04/24/2015 | Conference with M. Ciccarelli regarding notice of additional authority | | |
| | J HEINLEN | 2.00 hrs. | L500 |
| 04/26/2015 | Revise notice of additional authority; email to local counsel regarding same | | |
| | M CICCARELLI | 0.20 hrs. | L500 |
| 04/28/2015 | Prepare notice of additional authority | | |
| | J HEINLEN | 0.50 hrs. | L500 |

Fees for Professional Services ........................................................................... $ 1,733.40

**Summary of Fees**

| Name | Title | Hours | Rate/Hr | Amount |
|---|---|---|---|---|
| CICCARELLI, M | PARTNER | 0.40 | $ 625.50 | $ 250.20 |
| HEINLEN, J | PARTNER | 2.50 | 535.50 | 1,338.75 |
| COHEN, J | ASSOCIATE | 0.30 | 481.50 | 144.45 |

CURRENT FEES AND COSTS FOR THIS MATTER .................................................................. $ 1,733.40

TOTAL CURRENT DUE FOR THIS MATTER ............................................................................. $ 1,733.40

# Exhibit 2

Summary attorneys' fees and costs for the reexamination of Deep Sky's '047 Patent

| Date Worked | Invoice Date | Attorney | Hours | Billed | Narrative | Reduction for '047 Patent |
|---|---|---|---|---|---|---|
| 07/19/10 | 9/14/2010 Invoice=41348464 | MAX CICCARELLI | 2.90 | $ 1,464.50 | Review results of prior art searching by M. Perantie; conduct prior art searching, [redacted] revise invalidity powerpoint; email to S. Cozad and J. Iacuone regarding prior art findings and additional input from S. Lynch; attempts to reach C. Stuart (counsel for Deep Sky); email to C. Stuard regarding information about the reissue of the 047 patent | $ (439.35) |
| 02/03/11 | 3/31/2011 Invoice=41371237 | JUSTIN COHEN | 1.70 | $ 586.50 | Review the '047 patent owned by Deep Sky; further review prior draft of invalidity contentions; cursory review of references cited in draft invalidity contentions | $ (293.25) |
| 02/10/11 | 03/31/11 Invoice=41371237 | JUSTIN COHEN | 4.60 | $ 1,587.00 | Research regarding '770 validity issues, including review of remainder of docs produced by Deep Sky; review of previous invalidity presentations and references; review of file histories for the '770 and '047 patents; search for additional books and references | $ (476.10) |
| 03/08/11 | 5/9/2011 Invoice=41374827 | JUSTIN COHEN | 8.70 | $ 3,001.50 | Draft, review, and revise reexam request for '770 patent; review and revise claim chart to accompany '770 reexam request; meet with M. Ciccarelli regarding invalidity contentions, reexam requests, and document production regarding Southwest's website; study '047 patent file history; select claims for reexam and primary prior art references; begin draft of claim chart for the '047 patent the Atlas and Excel for Dummies references; | $ (1,800.90) |

| Date Worked | Invoice Date | Attorney | Hours | Billed | Narrative | Reduction for '047 Patent |
|---|---|---|---|---|---|---|
| 03/09/11 | 5/9/2011 Invoice=41374827 | JUSTIN COHEN | 8.40 | $ 2,898.00 | Prepare '770 reexam request and claim chart for review by M. Ciccarelli; draft claim chart for the '047 patent, including charting begin draft of '047 reexam request | $ (1,794.00) |
| 03/10/11 | 5/9/2011 Invoice=41374827 | JUSTIN COHEN | 5.70 | $ 1,966.50 | Review and revise claim chart for '047 patent, including adding additional support from the references; draft intro section for the '047 reexam request; work with litigation support to prepare documents for production; work with C. Sedighi to finalize invalidity contention cover pleading; correspond with M. Ciccarelli regarding new schedule and plan going forward | $ (1,376.55) |
| 03/29/11 | 5/9/2011 Invoice=41374827 | JUSTIN COHEN | 3.40 | $ 1,173.00 | Prepare draft pleading for consent to magistrate; review newly found references; compare references to '770 and '047 claims; revise '770 claim charts to include additional quotations, images, and citations | $ (234.60) |
| 03/29/11 | 5/9/2011 Invoice=41374827 | JUSTIN COHEN | 3.40 | $ 1,173.00 | Prepare draft pleading for consent to magistrate; review newly found references; compare references to '770 and '047 claims; revise '770 claim charts to include additional quotations, images, and citations | $ (234.60) |
| | | | | | | |
| 03/29/11 | 5/9/2011 Invoice=41374827 | JUSTIN COHEN | 3.40 | $ 1,173.00 | Prepare draft pleading for consent to magistrate; review newly found references; compare references to '770 and '047 claims; revise '770 claim charts to include additional quotations, images, and citations | $ (234.60) |

| Date Worked | Invoice Date | Attorney | Hours | Billed | Narrative | Reduction for '047 Patent |
|---|---|---|---|---|---|---|
| 04/06/11 | 6/6/2011 Invoice=41377869 | JUSTIN COHEN | 6.50 | $ 2,242.50 | Prepare screen shots demonstrating Windows 95 Help program and help files using Virtual PC; review and revise appendices A-C for '047 reexam request; begin Appendix D for '047 reexam request - new claim chart based on MS Help and Groff | $ (1,794.00) |
| 04/07/11 | 6/6/2011 Invoice=41377869 | KATIE NEWGENT | 1.90 | $ 294.50 | Prepare paperwork and documents for the Inter Partes Reexams regarding Patent No. 6,738,770 and Patent No. 7,370,047 | $ (147.25) |
| 04/07/11 | 6/6/2011 Invoice=41377869 | JUSTIN COHEN | 8.70 | $ 3,001.50 | Update '770 reexam request claim chart with new MS Help screen shots; revise and finalize '770 reexam request based on comments from M. Ciccarelli and J. Murphy; draft appendices D-G for '047 reexam request (claim charts based on MS Help in view of Groff, Mastering Excel 97 in view of VB Source Code and Groff); update '047 reexam request based on new claim charts | $ (2,628.90) |
| 04/07/11 | 03919 | MAX CICCARELLI | 2.30 | $ 1,219.00 | Review and revise reexamination requests | $ (609.50) |
| 06/06/11 | Invoice=41377869 | | | | | |
| 04/08/11 | 6/6/2011 Invoice=41377869 | JUSTIN COHEN | 7.80 | $ 2,691.00 | Review, revise, and finalize reexam requests for the '770 and '047 patents; prepare PTO forms and prior art to accompany reexam requests; review, revise, and finalize the preliminary invalidity contentions for service; work with litigation support on document production; work with J. Murphy to review reexam requests for completeness, accuracy, and PTO rules and procedures | $ (1,690.50) |

| Date Worked | Invoice Date | Attorney | Hours | Billed | Narrative | Reduction for '047 Patent |
|---|---|---|---|---|---|---|
| 04/11/11 | 6/6/2011 Invoice=41377869 | COSTS | | $ 8,800.00 | USPTO fee for inter partes reexamination request of U.S. Patent No. 7,370,047 (Reexam No. 95/000,626) | $ (8,800.00) |
| 04/18/11 | 6/6/2011 Invoice=41377869 | JAMES MURPHY | 5.10 | $ 2,193.00 | Attend to supplementation of '770 reexam request; follow-up on '047 request for potential reservice of reexam request | $ (877.20) |
| 04/25/11 | 6/6/2011 Invoice=41377869 | JUSTIN COHEN | 3.70 | $ 1,276.50 | Meet with M. Ciccarelli regarding reexam requests and motion to stay; respond to notice of incomplete reexam request for the '047 reexam by drafting a response, revising reexam request, revising transmittal documents, and organizing references to serve on the attorney of record to comply with PTO requirements; review PTO rules regarding merging and staying concurrent proceedings; review and send revised reexam requests to the PTO and attorney of record for the '047 patent | $ (893.55) |
| 04/25/11 | 6/6/2011 Invoice=41377869 | KATIE NEWGENT | 2.50 | $ 387.50 | Format Notice of Failure to Comply response to PDF document for U.S. Patent 6,738,770; prepare paperwork and documents to the Notice of Failure to Comply with the Trademark Office regarding the U.S. Patent 7,370,047 Inter Partes Reexamination | $ (232.50) |
| 05/09/11 | 6/30/2011 Invoice=41380777 | JUSTIN COHEN | 0.40 | $ 138.00 | Review status of reexamination requests for the '770 and '047 patents; provide status update to M. Ciccarelli | $ (69.00) |
| 05/13/11 | 6/30/2011 Invoice=41380777 | MAX CICCARELLI | 0.10 | $ 53.00 | Update from J. Cohen regarding status of 047 reexamination request | $ (53.00) |

| Date Worked | Invoice Date | Attorney | Hours | Billed | Narrative | Reduction for '047 Patent |
|---|---|---|---|---|---|---|
| 08/07/11 | 10/14/2011 Invoice=41391524 | JUSTIN COHEN | 1.60 | $ 552.00 | Prepare request to suspend Deep Sky's reissue application until the completion of the inter partes reexamination for the '047 patent (1.5); correspond with M. Ciccarelli regarding same (0.1) | $ (552.00) |
| 08/08/11 | 10/14/2011 Invoice=41391524 | JUSTIN COHEN | 1.10 | $ 379.50 | Revise draft notice to suspend Deep Sky's broadening reissue application (0.7); file notice with PTO and serve notice on opposing counsel (0.3); correspond with J. Almand regarding same (0.1) | $ (379.50) |
| 11/18/11 | 12/5/2011 Invoice=41397202 | JUSTIN COHEN | 0.80 | $ 276.00 | Analyze recent notice of improper filing in the reexamination proceeding for the '047 patent and research issues involving same | $ (276.00) |
| 11/21/11 | 12/5/2011 Invoice=41397202 | JUSTIN COHEN | 1.60 | $ 552.00 | Prepare, file, and serve a notice of concurrent proceeding for the '047 patent reexamination to give the Patent Office notice that the '047 patent is also involved in a reissue application where Deep Sky is attempting to broaden the patent's coverage | $ (552.00) |
| 11/21/11 | 12/5/2011 Invoice=41397202 | KATIE NEWGENT | 0.20 | $ 31.00 | Prepare and send copy of Notice of Concurrent Proceeding to opposing counsel | $ (31.00) |
| 12/01/11 | 1/31/2012 Invoice=41402755 | MAX CICCARELLI | 0.10 | $ 53.00 | Communications with J. Cohen regarding PTO's notice to suspend reissue pending resolution of reexam | $ (53.00) |

| Date Worked | Invoice Date | Attorney | Hours | Billed | Narrative | Reduction for '047 Patent |
|---|---|---|---|---|---|---|
| 12/01/11 | 1/31/2012 Invoice=41402755 | JUSTIN COHEN | 1.50 | $ 517.50 | Check status of Deep Sky's broadening reissue application for the '047 application (0.2); analyze the Patent Office's notice of intent to suspend the application and research our options should the Patent Office decide to conduct both the inter partes reexamination and the reissue application concurrently (1.1); [redacted] | $ (517.50) |
| 01/18/12 | 2/29/2012 Invoice=41405993 | JUSTIN COHEN | 0.50 | $ 190.00 | Check status of the '770 reexamination and the '047 patent reissue application (0.2); analyze the Patent Office's decision to suspend Deep Sky's broadening reissue application (0.3) | $ (190.00) |
| 01/25/12 | 2/29/2012 Invoice=41405993 | JUSTIN COHEN | 0.40 | $ 152.00 | Check status of Deep Sky reexams and determine due dates for responses for the '047 reexam in light of the recent office action | $ (152.00) |
| 01/30/12 | 2/29/2012 Invoice=41405993 | JUSTIN COHEN | 1.10 | $ 418.00 | Analyze the recent office action in the '047 reexam proceeding (0.9); check the status of the '770 reexam proceeding (0.2); | $ (376.20) |
| 03/29/12 | 5/16/2012 Invoice=41412733 | JUSTIN COHEN | 0.50 | $ 190.00 | Analyze Deep Sky's office action response in the reexamination of the '047 patent | $ (190.00) |
| | | | | | | |
| 04/04/12 | 6/8/2012 Invoice=41414893 | JUSTIN COHEN | 1.70 | $ 646.00 | Prepare to draft comments to Deep Sky's office action response by analyzing the response and briefly outlining arguments for each argument section | $ (646.00) |

| Date Worked | Invoice Date | Attorney | Hours | Billed | Narrative | Reduction for '047 Patent |
|---|---|---|---|---|---|---|
| 04/09/12 | 6/8/2012 Invoice=41414893 | JUSTIN COHEN | 0.70 | $ 266.00 | Outline argument sections for several of Deep Sky's arguments regarding the Section 103 obviousness combinations | $ (266.00) |
| | | | | | | |
| 04/10/12 | 6/8/2012 Invoice=41414893 | MAX CICCARELLI | 1.60 | $ 880.00 | Review Deep Sky's office action response and provide comments to J. Cohen | $ (880.00) |
| | | | | | | |
| 04/16/12 | 6/8/2012 Invoice=41414893 | JUSTIN COHEN | 2.10 | $ 798.00 | Draft comments to Deep Sky's office action response by preparing a draft section based on the deficiencies of Dr. Gorman's declaration and associated evidence | $ (798.00) |
| | | | | | | |
| 04/20/12 | 6/8/2012 Invoice=41414893 | JUSTIN COHEN | 0.90 | $ 342.00 | Draft comments to Deep Sky's response by drafting sections directed to Dr. Gorman's declaration | $ (342.00) |
| | | | | | | |
| 04/22/12 | 6/8/2012 Invoice=41414893 | JUSTIN COHEN | 3.80 | $ 1,444.00 | Research recent case law on Section 131 declarations (1.1); draft comments to Deep Sky's response by drafting additional detailed critiques directed to Dr. Gorman's declaration and evidence (2.7) | $ (1,444.00) |
| | | | | | | |
| 04/23/12 | 6/8/2012 Invoice=41414893 | MAX CICCARELLI | 0.50 | $ 275.00 | Meet with J. Cohen regarding comments to Deep Sky's office action response | $ (275.00) |
| | | | | | | |
| 04/23/12 | 6/8/2012 Invoice=41414893 | JUSTIN COHEN | 7.20 | $ 2,736.00 | Review and revise comments section dealing with Dr. Gorman's Section 131 declarations (1.3); draft comments to Deep Sky's response regarding the Chester reference (Mastering Excel 97) (0.6); draft comments regarding each of the four separate obviousness rejections (3.9); draft comments on the obviousness of combining the references (0.6); draft conclusion and prepare draft for further review by M. Ciccarelli (0.8) | $ (2,736.00) |
| | | | | | | |

| Date Worked | Invoice Date | Attorney | Hours | Billed | Narrative | Reduction for '047 Patent |
|---|---|---|---|---|---|---|
| 04/24/12 | 6/8/2012 Invoice=41414893 | MAX CICCARELLI | 1.50 | $ 825.00 | Review and revise comments to Deep Sky's office action response | $ (825.00) |
| | | | | | | |
| 04/24/12 | 6/8/2012 Invoice=41414893 | JUSTIN COHEN | 2.60 | $ 988.00 | Review and revise draft comments based on revisions and suggestions from M. Ciccarelli, including drafting a detailed introduction summarizing each argument section (2.3); conference with S. Paxson regarding the draft, arguments, and strategy (0.3) | $ (988.00) |
| | | | | | | |
| 04/24/12 | 6/8/2012 Invoice=41414893 | SARAH PAXSON | 1.50 | $ 661.50 | Review office actions and response to same by patentee in reexamination | $ (661.50) |
| | | | | | | |
| 04/25/12 | 6/8/2012 Invoice=41414893 | JUSTIN COHEN | 4.20 | $ 1,596.00 | Review comments and revisions from S. Paxson on the draft comments to Deep Sky's office action response and conference with S. Paxson (0.7); revise draft comments accordingly per comments from S. Paxson (2.3); correspond with J. Almand regarding draft comments (0.1); prepare, file, and serve comments, information disclosure statement, and prior art references (1.1) | $ (1,596.00) |
| | | | | | | |
| 04/25/12 | 6/8/2012 Invoice=41414893 | SARAH PAXSON | 3.20 | $ 1,411.20 | Edit draft reply in support of request for reexamination (3.0); conference with J. Cohen regarding same (.2) | $ (1,411.20) |

| | | | | | | |
|---|---|---|---|---|---|---|
| 05/24/12 | 6/30/2012 Invoice=41417377 | CINDY HOLLAND | 0.30 | $ 56.70 | Perform status check on re-examination No. 95 / 00,626 of patent No. 7, 370,047 | $ (56.70) |

| Date Worked | Invoice Date | Attorney | Hours | Billed | Narrative | Reduction for '047 Patent |
|---|---|---|---|---|---|---|
| 05/25/12 | 6/30/2012 Invoice=41417377 | JUSTIN COHEN | 1.10 | $ 418.00 | Analyze correspondence from the Patent Office regarding the reexam of the '047 patent (0.5); conference with M. Ciccarelli regarding same (0.1); research options for Deep Sky and procedure in reexaminations following the office action (0.5) | $ (418.00) |
| 05/29/12 | 6/30/2012 Invoice=41417377 | JUSTIN COHEN | 0.30 | $ 114.00 | Correspond with A. Mayeux regarding a recent office action from the Patent Office regarding the reexamination of the '047 patent, including a brief summary of the status of the case and reexamination proceedings | $ (114.00) |
| 07/16/12 | 8/31/2012 Invoice=41422910 | JUSTIN COHEN | 1.30 | $ 494.00 | Analyze Dr. Gorman's amended declaration and newly cited evidence in preparation to draft comments to Deep Sky's reply in '047 patent reexam, including outlining notes for the comments | $ (494.00) |
| | | | | | | |
| 07/17/12 | 8/31/2012 Invoice=41422910 | JUSTIN COHEN | 4.80 | $ 1,824.00 | Draft comments to Deep Sky reply in the '047 reexam by focusing on the deficiencies in the amendments to the declaration and new evidence, and highlighting why all six of the Examiner's rejections should stand, including quoting the Examiner's findings from the action closing prosecution (ACP) | $ (1,824.00) |
| | | | | | | |
| 07/18/12 | 8/31/2012 Invoice=41422910 | JUSTIN COHEN | 4.30 | $ 1,634.00 | Draft remaining argument sections in the comments to Deep Sky's response to the Examiner's action closing prosecution in the '047 reexam, including adding additional case law support and reviewing and revising the previous sections | $ (1,634.00) |
| | | | | | | |

| Date Worked | Invoice Date | Attorney | Hours | Billed | Narrative | Reduction for '047 Patent |
|---|---|---|---|---|---|---|
| 07/19/12 | 8/31/2012 Invoice=41422910 | JUSTIN COHEN | 2.90 | $ 1,102.00 | Review comments and suggestions from M. Ciccarelli regarding the draft comments to Deep Sky's reply for the '047 reexamination (0.3); prepare revised draft incorporating M. Ciccarelli's changes and suggestions, including adding several new sections for further review by M. Ciccarelli, S. Paxson, and A. Mayeux (2.6) | $ (1,102.00) |
| | | | | | | |
| 07/19/12 | 8/31/2012 Invoice=41422910 | MAX CICCARELLI | 1.80 | $ 990.00 | Review office action and Deep Sky's response, and review and revise our draft comments and provide comments and feedback to J. Cohen | $ (990.00) |
| | | | | | | |
| 07/20/12 | 8/31/2012 Invoice=41422910 | JUSTIN COHEN | 2.10 | $ 798.00 | Conference with A. Mayeux regarding the draft comments (0.1); revise the draft comments based on suggestions from A. Mayeux (0.4); review and revise draft based on comments from S. Paxson (0.9); proofread, finalize, and file comments to Deep Sky's reply in the '047 reexam (0.7) | $ (798.00) |
| | | | | | | |
| 07/20/12 | 8/31/2012 Invoice=41422910 | SARAH PAXSON | 0.40 | $ 176.40 | Review and edit proposed response to patentee's reply to amendment closing prosecution | $ (176.40) |
| 10/08/12 | 12/10/2012 Invoice=41433027 | CINDY HOLLAND | 0.20 | $ 37.80 | Perform status check with U.S. Patent and Trademark Office for patent reexamination Nos. 95/000,626 and 95/000,625 | $ (37.80) |
| 10/11/12 | 12/10/2012 Invoice=41433027 | CINDY HOLLAND | 0.90 | $ 170.10 | Attention to file organization for patent reexamination Nos. 95/000,625 and 95/000,626; review of file history for the purposes of next action due | $ (170.10) |

| Date Worked | Invoice Date | Attorney | Hours | Billed | Narrative | Reduction for '047 Patent |
|---|---|---|---|---|---|---|
| 10/30/12 | 12/10/2012 Invoice=41433027 | JUSTIN COHEN | 0.30 | $ 114.00 | Draft letter to opposing counsel regarding their failure to cite the recent office action from the '770 reexam to the examiner handling the '047 reexam | $ (114.00) |
| 11/02/12 | 12/20/2012 Invoice=41434731 | CINDY HOLLAND | 0.30 | $ 56.70 | Perform status check with U.S. Patent and Trademark Office for patent reexamination Nos. 95/000,626 and 95/000,625 | $ (56.70) |
| 11/13/12 | 12/20/2012 Invoice=41434731 | JUSTIN COHEN | 0.20 | $ 76.00 | Correspond with opposing counsel regarding his duty to disclose the recent decision from the '770 reexamination to the examiner handling the '047 reexamination | $ (76.00) |
| 11/15/12 | 12/20/2012 Invoice=41434731 | JUSTIN COHEN | 0.70 | $ 266.00 | Analyze right of appeal notice in the reexam for the '047 patent (0.4); correspond with A. Mayeux regarding the same (0.1); correspond with opposing counsel regarding his duty to disclose the right of appeal notice to the examiner handling the reexam for the '770 patent (0.2) | $ (266.00) |
| 02/21/13 | 4/5/2013 Invoice=41443734 | JUSTIN COHEN | 1.60 | $ 664.00 | Review and analyze Deep Sky's recently filed appeal brief (1.4); conference with M. Ciccarelli regarding the same (0.2) | $ (664.00) |
| 02/26/13 | 4/5/2013 Invoice=41443734 | JUSTIN COHEN | 1.80 | $ 747.00 | Review Deep Sky's appeal brief and prepare outline of arguments (1.6); correspond with A. Mayeux regarding same (0.2) | $ (747.00) |
| 03/13/13 | 4/24/2013 Invoice=41445551 | JUSTIN COHEN | 1.60 | $ 664.00 | Prepare to draft rebuttal to Deep Sky's appeal brief in the '047 reexam by analyzing the brief and accompanying exhibits | $ (664.00) |

| Date Worked | Invoice Date | Attorney | Hours | Billed | Narrative | Reduction for '047 Patent |
|---|---|---|---|---|---|---|
| 03/14/13 | 4/24/2013 Invoice=41445551 | CINDY HOLLAND | 2.80 | $ 560.00 | Research regarding appeals briefs; prepare shell for response to Patent Owner's Appeal Brief in patent reexamination | $ (560.00) |
| 03/14/13 | 4/24/2013 Invoice=41445551 | JUSTIN COHEN | 1.60 | $ 664.00 | Research rules for reexamination appeals and responses, including Board opinions regarding same in order to prepare the draft response to Deep Sky's appeal brief in the reexamination of the '047 patent | $ (664.00) |
| 03/16/13 | 4/24/2013 Invoice=41445551 | JUSTIN COHEN | 6.80 | $ 2,822.00 | Prepare draft rebuttal brief in response to Deep Sky's appeal brief in the reexamination of the '047 patent, including researching case law regarding waiver, analyzing Deep Sky's arguments, preparing a new claim chart for the Spaey provisional application, and addressing each of the new issues raised on appeal | $ (2,822.00) |
| 03/17/13 | 4/24/2013 Invoice=41445551 | JUSTIN COHEN | 3.60 | $ 1,494.00 | Review and revise draft rebuttal brief, prepare additional arguments with more citations to the record, and prepare draft brief for further review by M. Ciccarelli | $ (1,494.00) |
| 03/18/13 | 4/24/2013 Invoice=41445551 | MAX CICCARELLI | 1.50 | $ 862.50 | Review response to Deep Sky's appellate brief and provide comments to J. Cohen; meet with J. Cohen regarding same | $ (862.50) |
| 03/18/13 | 4/24/2013 Invoice=41445551 | JAMES MURPHY | 1.90 | $ 902.50 | Review appeal brief on inter partes reexam | $ (902.50) |

| Date Worked | Invoice Date | Attorney | Hours | Billed | Narrative | Reduction for '047 Patent |
|---|---|---|---|---|---|---|
| 03/18/13 | 4/24/2013 Invoice=41445551 | JUSTIN COHEN | 2.70 | $ 1,120.50 | Conference and correspond with J. Murphy regarding draft response brief (0.4); analyze additional research regarding additional potential issues in the appeal (0.7); conference with M. Ciccarelli regarding the draft (0.3); review and revise the draft response brief (1.3) | $ (1,120.50) |
| 03/19/13 | 4/24/2013 Invoice=41445551 | JAMES MURPHY | 2.80 | $ 1,330.00 | Review reexamination appeal brief and comment; complete review and comment on appeal brief | $ (1,330.00) |
| 03/19/13 | 4/24/2013 Invoice=41445551 | MICHAEL HEINLEN | 0.80 | $ 388.00 | Edit appeal brief | $ (388.00) |
| 03/19/13 | 4/24/2013 Invoice=41445551 | JUSTIN COHEN | 4.20 | $ 1,743.00 | Conference with J. Murphy regarding additional research for response brief (0.4); review, revise, and prepare brief and exhibits/appendices for filing (3.1); file appeal brief and exhibits/appendices (0.7) | $ (1,743.00) |
| 04/15/13 | 5/31/2013 Invoice=41449710 | CINDY HOLLAND | 0.30 | $ 60.00 | Perform status check for Deep Sky Software patent reexamination of Patent No. 7,370,047 and No. 6,738,770 | $ (60.00) |
| 06/12/13 | 9/17/2013 Invoice=41459472 | JUSTIN COHEN | 1.30 | $ 539.50 | Analyze Deep Sky's rebuttal brief in the '047 reexam | $ (539.50) |
| 06/13/13 | 9/17/2013 Invoice=41459472 | JUSTIN COHEN | 0.40 | $ 166.00 | Conference and correspond with J. Murphy regarding Deep Sky's rebuttal brief in the '047 reexam | $ (166.00) |
| 07/25/13 | 9/17/2013 Invoice=41459472 | CINDY HOLLAND | 0.30 | $ 60.00 | Perform status check on Southwire patent reexam No. 95/000,626 | $ (60.00) |

| Date Worked | Invoice Date | Attorney | Hours | Billed | Narrative | Reduction for '047 Patent |
|---|---|---|---|---|---|---|
| 05/02/14 | 8/31/2014 Invoice=41492596 | JUSTIN COHEN | 0.50 | $ 225.00 | Analyze opinion from the Patent Trial and Appeal Board regarding the '047 patent (0.3); correspond with A. Mayeux regarding same (0.2) | $ (225.00) |
| | | | | | **Total Reductions for '047 Patent Reexam** | **$ (64,156.95)** |

# Exhibit 3

Jonathan Pettit Letter dated March 25, 2011

Lexevia
Enlightened. Law.

Colbern C Stuart, III Esq.
D: 310.746.6112
M: 858.335.2653
cole.stuart@lexevia.com

March 25, 2011

*Via email* **max.ciccarelli@tklaw.com**

Max Ciccarelli
**Thompson & Knight LLP**
One Arts Plaza
1722 Routh Street, Suite 1500
Dallas, TX 75201

**OFFER MADE PURSUANT TO FRE 408 SETTLEMENT DISCUSSIONS ONLY**

Re: *Deep Sky Software, Inc. v. Southwest Airlines Co.*, Case No. 10-cv-1234-MMA (CAB), United States District Court for the Southern District of California

Dear Max:

Deep Sky extends their thanks to you and Southwest Airlines' representatives for your careful and thorough analysis of this matter and for the time invested in speaking with our firm and Deep Sky representatives to date. We appreciate your good faith efforts to resolve this dispute. We provide this letter as an attempt to provide our analysis of the references you have disclosed and propose licensing terms to resolve the matter on amicable terms. As such, this communication should be treated as a confidential settlement communication per Federal Rules of Evidence section 408 and California Rules of Evidence section 1152.

## I. Summary of Events To Date

On June 9, 2010, Deep Sky filed suit in the Southern District of California against Southwest for infringement of U.S. Patent No. 6,738,770 ("the '770 Patent"), entitled a "System and Method for Filtering and Sorting Data." As you are aware, the '770 Patent is directed to a method for interactive filtering and sorting data contained in a database using a computer system.

Southwest owns and operates a flight reservation system on its Internet website that sells airline flights to its customers. It is Deep Sky's contention that Southwest's online reservation system infringes claims of the '770 Patent and therefore Southwest must obtain a license from Deep Sky for past damages and future use of Deep Sky's patented technology.

On December 1, 2010, the parties participated in a Rule 26(f) Settlement and Case Management Conference at Southwest's Headquarters in Dallas, Texas. On December 20, 2010, the parties exchanged Rule 26(a) Initial Disclosures and filed the parties' Joint Report of the Rule 26(f) Conference with the Court. On December 27, 2010, the parties participated in the Early Neutral Evaluation/Case Management Conference in front of Magistrate Judge Bencivengo as required by the Southern District Local Rules. At the ENE Conference, the parties discussed their respective positions in the case, as well as potential settlement scenarios. During the Conference, Deep Sky made an offer to Southwest to settle the case for a sum of $1,000,000 in return for a non-exclusive license to the asserted and other relevant claims of the '770 Patent. This offer was rejected by Southwest. In response, Southwest apparently made a counter-offer (in the form of a statement through Magistrate Judge Bencivengo) that it was willing to pay "something in the 5-figure range" to settle the case. Deep Sky rejected this counter-offer.

Since the ENE Conference, the parties proceeded on the claim construction discovery timeline set by Magistrate Judge Bencivengo. On January 10, 2011, Deep Sky provided its Preliminary Infringement Contentions to Southwest. On March 10, 2011, however, the Judge granted the parties' Joint Motion to Modify Case Management Dates in order for the parties to discuss settlement possibilities. According to the new case schedule, Southwest must provide its Preliminary Invalidity Contentions to Deep Sky on April 8, 2011, and discovery related to damages has been stayed until April 14, 2011.

At the ENE, Southwest disclosed that it intended to file a Request for Reexamination of the '770 Patent with the US Patent and Trademark Office and simultaneously request a stay in this proceeding. Magistrate Judge Bencivengo stated Judge Anello would consider such a request after Southwest's submission of its Invalidity Contentions. Our impression was that such a stay was not guaranteed.

## II. Southwest's Alleged Prior Art

To facilitate your understanding of Deep Sky's position in this matter we provide the following summary analysis of the art provided to us by Southwest Airlines in December 2010. Our analysis reveals that the alleged prior art can be logically divided into three groups as follows:

A. The first group encompasses patents describing a user searching information contained in a computerized database ("Search Patents").

B. The second group includes art describing finding a word in a list on a character-by-character basis as a user types characters into a cell ("Character-by-Character Art"). In this second group, the associated program(s) respond, on a character-by-character basis, to a user typing letters into the cell. During the Dallas meeting you referred to this method as "incremental searching."

C. Additionally, you have provided a third group from with priority dates from the year 2000 ("Year 2000 References") which we do not believe to be anticipatory.

As a courtesy to your client, we provide our summary analysis of each group below.

**A. The Search Patents Do Not Anticipate Dr. Gorman's Invention**

The Search Patents in the first group provided by Southwest includes two pre-year 2000 references: the Marshall Patent and the Groff Patent.

*1. The Marshall Patent*

The Marshall Patent discloses a searching procedure using terms selected from drop-down menus, where the selection of search criteria in one column influences results displayed in different columns. The Marshall Patent, however, does not disclose incremental searching as disclosed in Dr. Gorman's Patent. Further, the Marshall Patent does not disclose a user searching by de novo entry of search criteria. To search with a term, a user must first find the term by selecting from drop down menus. (*See, e.g.*, Fig. 11, p. 16 of the provided document.)

As such, the Marshall Patent is merely "old school" technology, over which Dr. Gorman's Invention is a significant advance that Southwest presently utilizes in its online flight booking system.

*2. The Groff Patent*

The Groff Patent discloses manually and/or "graphically" selecting an entry in a column, and then directing the search of that column for that value. The Groff Patent, however, does not disclose incremental searching as described in the '770 Gorman Patent. Further, the Groff Patent does not disclose a user searching using de novo entered search criteria. The Groff Patent only discloses searching based on a user's selection of values already present in the list. In a fashion similar to the Marshall Patent, to search for a term, a user must first find the term. The Groff Patent does not disclose incremental searching; the search criteria is not typed into a cell that responds on a character-by-character basis, instead the filter criteria is obtained by manually selecting a cell by, for example, using a mouse. (*See, e.g.*, Fig. 5, p. 2 of the provided document.)

Also present in the art in the late 20th Century, although not referenced by Southwest, is the simple "FIND" feature of several programs, where a user types into a search box a character string and then directs the program to search for the entered character string.

**B. The Character-by-Character Art Does Not Anticipate Dr. Gorman's Invention**

The Character-by-Character Art in the second group of art are the references that disclose incremental searching. The Character-by-Character Art provided the focus for much of your discussion during the Rule 26(f) Settlement and Case Management Conference we held in Dallas. These references include (1) the 1978 EMACS reference, (2) the 1996 Que-Using Visual Fox Pro ("1996 Que-Fox Pro") reference, (3) the 1997 Visual FoxPro help file ("1997 Visual Fox Pro") reference, (4) the 1998 Delphi Developers Journal ("1998 Delphi") reference, and (5) the 1998 Quicken reference ("1998 Quicken"). These are briefly summarized in part below:

1. The 1978 EMACS Reference: The 1978 EMACS discloses "as soon as you type any character, some action is performed, and you see the resulting buffer." (p. 6 of the provided document)
2. 1996 QUE-FoxPro discloses the choice of using or not using incremental searching.

(p. 6 of the provided document)

3. 1997 Visual Fox Pro discloses incremental searching down a list. (p. 1-5 of the provided document)
4. 1998 Delphi discloses using an incremental search box to search through a long list. (p. 1 of the provided document)
5. 1998 Quicken discloses incremental searching down a list. (p. 1-6 of the provided document)

All of the Character-by-Character Art references disclose variations on a theme: (1) a user enters text into a cell, (2) such entry then drives finding a row, or rows, in a list of names associated with the cell, and (3) such finding occurs on a character-by-character basis as the text is entered. The data found, for example, may represent the first match in the associated list that corresponds to the entered text. Thus, incremental searching is similar to a computerized search for a name in a telephone book. For example, if one is searching for "Josephine Smith" in a telephone book, one would first find the "S" pages, then the "Sm" pages, etc., until one found the correct page, and then run one's finger down the list of names until the "Josephine Smith" entry is found. Incremental searching, as disclosed in this second group of references, is merely a computerization of running ones finger down a printed list of names.

While Dr. Gorman's Invention includes a feature similar to incremental searching, and generally refers to this feature as entering filter criteria into an interactive filter cell, his Invention also contains a significant time-saving advance over this type of time-consuming "brute force" search. Dr. Gorman's Invention, in certain aspects and/or claims, also couples this feature with directing the program to operate a "sort procedure" on a character-by-character basis in response to the insertion of text into the interactive filter cell. This is distinguishable from the character-by-character searching of a list associated with an entry cell disclosed by the Character-by-Character Art references described above.

**C. The Year 2000 References Are Not Prior Art to Dr. Gorman's Invention**

Southwest also provided a third group of references: (1) The Raskin reference, (2) the Spaey Publication, and (3) the Trower Patent.

*1. The Raskin Publication*

The Raskin Reference was not published over a year before the priority date for Dr. Gorman's '770 Patent and therefore does not qualify as a 102(b) anticipatory reference.

*2 & 3. The Spacy and Trower References*

The Spaey Publication and the Trower Patent both have priority dates in 2000 before the priority date of Dr. Gorman's '770 Patent. However, examination of the documents already provided to Southwest demonstrate that Dr. Gorman's Invention was conceived and reduced to practice, and furthermore, disclosed at a conference almost a year before the filing of the '770 Patent's priority document, U.S. Provisional Patent Application Serial No. 60/246,035. (*See, e.g.*, the notes describing the AABB Meeting in late 1999 at DS00000276; the description of the already-functional Tracker Invention dated in April 2000 at DS00000385 to 389; the description of the Tracker Invention dated in Dec. 1999 at DS00000407 to 409; and the H2K Philosophy document at DS00000423. Further, these documents can be supported by the testimony of those involved in bringing Dr. Gorman's Invention to fruition including Dr. Gorman himself and Dr. Tony Cooper.)

Therefore, the Raskin Reference, the Spaey Publication, and the Trower Patent are not prior art to Dr. Gorman's Invention.

**D. Conclusion**

The power of Dr. Gorman's Invention, in its broadest applications, is seen in its current widespread use and current commercial success. For example, Southwest's website along with several other similar airline reservation websites employs his technology. For a similar example, one can see Google's television commercial during the Super Bowl in 2010 and the current version of "Google Instant." The most advanced technology companies in the world have only recently caught up to Dr. Gorman's vision.

If incremental searching, or entering filter criteria into an interactive filter cell has been in the art since 1978, this begs the question as to why is the use of Dr. Gorman's Invention not more widespread? The answer is that incremental searching, by itself, was not a substantial advance. To take the world by storm, interactive search also requires the "sorting" step as provided in Dr. Gorman's Invention. The references provided to us by Southwest that use "incremental searching" only search down a list for results matching the inserted values. They do not sort the list; they do not perform a sorting procedure on the possible data sets to enable a user to efficiently identify the most desirable search object.

Therefore we are confident that none of the references provided to us by Southwest anticipate, or render obvious, the asserted claims of Dr. Gorman's '770 Patent.

## III. Licensing Options

In this case, Deep Sky is requesting that the Court grant an injunction to stop Southwest from using its infringing website, as well as payment of monetary damages. As a measure of damages and the basis for a licensing fee, Deep Sky provides the below model for a reasonable royalty based on Southwest's annual revenues which utilize Dr. Gorman's patented technology. As shown in Table I below, this model presents two ranges for the royalty rate ("Low" & "High").

In the chart, Line 1 corresponds to Southwest's annual revenues of $10.4 billion for FY2009. Lines 2-4 shows the dollar amount of $253 million that is a function of the website contribution to total bookings (81%) and the increase in revenues from FY2008-2009 (3%). Lines 5-6 present an estimate of the increase in revenue due to Southwest's overall technical improvement of its website (3.33-5%). And finally, Lines 7-8 show an estimate of the increase in revenue due to the use of the infringing technology of the '770 Patent (3-25%). More specifically, Line 8 presents two different estimates for the annual increase in monetary value due to the Deep Sky technology: Low ($2.5 million) and High ($32 million). *Thus, when* *employing a reasonable royalty rate with a range of .03% - .375% as applied to Southwest's website booking revenues, Line 8 presents a range of potential annual royalty payments from approximately $2.5 – 32 million.*

**Table I**

| DATA PARAMETER | LOW | HIGH |
|---|---|---|
| 1. Overall revenue (2009) | $10.4 billion | $10.4 billion |
| 2. % of revenue from Southwest website bookings | 81% | 81% |
| 3. % of increased revenue from Southwest website over 2008 | 3% | 3% |
| 4. U.S. dollars increased revenue (lns. 1-3) | $253 million | $253 million |
| 5. % of increased revenue attributed to Southwest website overall technical improvement | 10% | 50% |
| 6. U.S. dollars increased revenue (ln. 5) | $25 million | $127 million |
| 7. % of increased revenue attributed to Deep Sky technology | 10% | 25% |
| 8. U.S. dollars increased revenue (annual royalty to Deep Sky) (ln. 7) | $2.5 million | $32 million |

As shown above, if the case proceeds to trial, Deep Sky will seek a minimum royalty of several million dollars. However, given the inherent uncertainties and guaranteed costs of litigation, Deep Sky made its opening offer of $1,000,000 to Southwest in a good faith effort to produce the best outcome for both parties. Undoubtedly, Southwest does not relish the thought of spending significant sums on legal fees in the current case as it continues to pick up speed and heads toward resolution. Even if Southwest proceeds with a strategy of filing a Request for Reexamination of the '770 Patent, that process will also bring considerable costs and include an uncertain timeline and outcome. Indeed, one possible outcome of a reexamination procedure would be claims that more exactly read on Southwest's infringing activities while eliminating any conceivable conflict with potential prior art.

Accordingly, in order to settle the litigation and as a compromise demand, Deep Sky is presently willing to modify its offer and to discuss the following "early licensee" options as shown below in Table II:

**Table II**

| | | | | | |
|---|---|---|---|---|---|
| **LICENSE TYPE** | *Non-exclusive*, limited to '770 infringing claims | *Non-exclusive*, to '770 plus all related patents | *Non-exclusive*, to '770 plus all related patents; Deep Sky consulting services to make further use of Tracker technology | *Exclusive* to '770 & '047 for air ticket reservation systems; includes Deep Sky consulting | *Exclusive* to '770 & '047 for all travel reservation systems; includes Deep Sky consulting |
| **LICENSE FEE** | $775,000 | $800,000 | $925,000 | $1,000,000 | $1,500,000 |

Deep Sky is willing to make these fully-paid-up license offers at a substantial discount, due in part to Southwest's good faith negotiations and status as an early licensee. The damages/licensing fees will undoubtedly increase for future licensees, and in the event that we must proceed with litigation we will be seeking damages and royalties at the much higher range described in the "High" column of Table I.

We again thank you for you and your client's professionalism and attention to this matter. It is apparent that you have conducted significant due diligence and provided excellent representation to your client. We nevertheless remain adamant that your client must obtain a license and compensate Deep Sky for past and future use of Dr. Gorman's Invention. We continue to desire to resolve amicably this matter with your client.

Sincerely,

Jonathan L. (Jay) Pettit

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